Tab 1	**CS/SB 210** by **CF, Harrell**; (Similar to CS/H 00295) Substance Abuse Services

Tab 2	**CS/SB 232** by **CJ, Garcia**; (Similar to H 00603) Exploitation of Vulnerable Persons

Tab 3	**SB 248** by **Martin**; Public Records/Personal Identifying Information of Certain Victims

Tab 4	**CS/SB 250** by **CA, Martin**; Natural Emergencies

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Tab 5	**CS/SB 254** by **HP, Yarborough (CO-INTRODUCERS) Perry, Broxson**; (Compare to H 01421) Treatments for Sex Reassignment

Tab 6	**CS/SB 258** by **GO, Burgess**; (Compare to H 00563) Prohibited Applications on Government-issued Devices

Tab 7	**CS/SB 382** by **CJ, Bradley**; (Similar to CS/H 00043) Compensation for Wrongfully Incarcerated Persons

Tab 8	**SB 736** by **Brodeur**; (Similar to H 01135) Controlled Substances

Tab 9	**SB 1416** by **Gruters**; (Identical to H 01409) Dissolution of Marriage

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The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

FISCAL POLICY
Senator Hutson, Chair
Senator Stewart, Vice Chair

MEETING DATE: Thursday, March 23, 2023
TIME: 8:30—11:30 a.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Hutson, Chair; Senator Stewart, Vice Chair; Senators Albritton, Berman, Boyd, Burton, Calatayud, Collins, DiCeglie, Garcia, Jones, Mayfield, Osgood, Rodriguez, Simon, Thompson, Torres, Trumbull, Wright, and Yarborough

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 210** Children, Families, and Elder Affairs / Harrell (Similar CS/H 295)	Substance Abuse Services; Revising application requirements for licensure as a substance abuse service provider; requiring the Department of Children and Families to establish, by a specified date, a mechanism to impose and collect fines for certain violations of law; revising credentialing requirements for recovery residences; prohibiting service providers from referring patients to, or accepting referrals from, specified recovery residences, etc. CF 02/14/2023 Fav/CS AHS 03/08/2023 Favorable FP 03/23/2023	
2	**CS/SB 232** Criminal Justice / Garcia (Similar H 603)	Exploitation of Vulnerable Persons; Specifying conditions under which a person commits exploitation of a person 65 years of age or older; providing criminal penalties for violations of the act; specifying that not knowing the age of a victim is not a defense to such crime; authorizing persons who are in imminent danger of exploitation to petition for an injunction for protection; providing time limitations for commencing prosecution for violations of the act, etc. CJ 03/13/2023 Fav/CS FP 03/23/2023	
3	**SB 248** Martin	Public Records/Personal Identifying Information of Certain Victims; Defining the term “victim”; exempting from public records requirements the personal identifying information of certain victims held by the Division of Emergency Management for a specified timeframe; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CA 03/15/2023 Favorable FP 03/23/2023	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 250** Community Affairs / Martin	Natural Emergencies; Prohibiting counties and municipalities, respectively, from prohibiting temporary shelters on residential property for a specified timeframe under certain circumstances; authorizing independent special fire control districts to file a specified report on an alternative schedule under certain circumstances; requiring the Division of Emergency Management to post a model contract for debris removal on its website by a specified date; increasing the timeframe to exercise rights under a permit or other authorization; encouraging local governmental entities to develop an emergency financial plan for major disasters, etc. CA 03/15/2023 Fav/CS FP 03/23/2023	
5	**CS/SB 254** Health Policy / Yarborough (Compare H 1421)	Treatments for Sex Reassignment; Granting courts of this state jurisdiction to enter, modify, or stay a child custody determination relating to a child present in this state to the extent necessary to protect the child from being subjected to sex-reassignment prescriptions or procedures in another state; prohibiting certain public entities from expending state funds for the provision of sex-reassignment prescriptions or procedures; requiring certain licensed facilities, by a specified date and as a condition of licensure thereafter, to provide a signed attestation of specified information to the Agency for Health Care Administration; prohibiting sex-reassignment prescriptions and procedures for patients younger than 18 years of age, etc. HP 03/13/2023 Fav/CS FP 03/23/2023	
6	**CS/SB 258** Governmental Oversight and Accountability / Burgess (Compare H 563)	Prohibited Applications on Government-issued Devices; Requiring public employers to take certain actions relating to prohibited applications; prohibiting employees and officers of public employers from downloading or accessing prohibited applications on government-issued devices; providing exceptions; providing a deadline by which specified employees must remove, delete, or uninstall a prohibited application; requiring the Department of Management Services to compile a specified list and establish procedures for a specified waiver, etc. GO 03/15/2023 Fav/CS FP 03/23/2023	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 382** Criminal Justice / Bradley (Similar CS/H 43)	Compensation for Wrongfully Incarcerated Persons; Revising requirements for when a petition seeking compensation must be filed; providing that a deceased person's heirs, successors, or assigns do not have standing to file such a petition; revising compensation eligibility requirements; revising requirements for awarding compensation, etc. CJ 03/06/2023 Fav/CS ACJ 03/14/2023 Favorable FP 03/23/2023	
8	**SB 736** Brodeur (Similar H 1135)	Controlled Substances; Adding nitazene derivatives to the list of Schedule I controlled substances, etc. CJ 03/13/2023 Favorable FP 03/23/2023	
9	**SB 1416** Gruters (Identical H 1409, Compare H 1301, S 1292)	Dissolution of Marriage; Authorizing the court to consider the adultery of either spouse and any resulting economic impact in determining the amount of alimony awarded; providing a burden of proof for the party seeking support, maintenance, or alimony; removing the unanticipated change of circumstances requirement regarding modifying a parenting plan and time-sharing schedule; requiring the court to reduce or terminate support, maintenance, or alimony under certain circumstances; authorizing the court to reduce or terminate an award of support, maintenance, or alimony upon specific written findings of fact regarding the obligor's retirement, etc. FP 03/23/2023 RC	
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Fiscal Policy

BILL:	CS/SB 210
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Harrell
SUBJECT:	Substance Abuse Services
DATE:	March 22, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Sneed	Money	AHS	**Favorable**
3.	Delia	Yeatman	FP	**Pre-Meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 210 modifies requirements for licensed substance abuse service providers offering treatment to individuals living in recovery residences. The bill prohibits the following substances from being used on the premises of a provider licensed by the Department of Children and Families (the DCF):

- Alcohol;
- Marijuana, including marijuana certified by a qualified physician for medical use;
- Illegal drugs; and
- Prescription drugs when used by persons other than for whom the medication is prescribed.

The bill also prohibits referrals from licensed service providers to recovery residences which allow the use of such substances on the premises, and it requires service providers to provide proof of a prohibition on the use of such substances in applications for licensure with the DCF. Additionally, the bill provides that referrals to a recovery residence include placement into the licensed housing component of a service provider's day or night treatment program, regardless of whether the housing component is affiliated with the service provider. This will ensure that all patients referred to a recovery residence are also referred into licensed community housing as part of treatment.

The bill makes it a second degree misdemeanor for any person discharged from a recovery residence to willfully refuse to depart after being warned by an owner or authorized employee of the residence.

The bill requires the DCF to establish a mechanism for the imposition and collection of fines arising from failed inspections of recovery residences and improper referrals made by licensed service providers.

The bill may have a negative fiscal impact to private substance abuse service providers and state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance use disorder (SUD) is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[2] SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[3] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[4] Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.[5]

In 2021, approximately 46.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year.[6] The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.[7] Provisional data from the CDC's National Center for Health Statistics indicate there were an estimated 107,622 drug overdose deaths in the United States

[1] The World Health Organization, *Mental Health and Substance Abuse*, available at https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse; (last visited February 8, 2023); the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics (last visited February 8, 2023).
[2] The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at https://www.naatp.org/resources/clinical/substance-use-disorder (last visited February 8, 2023).
[3] The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited February 8, 2023).
[4] The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited February 8, 2023).
[5] *Id*.
[6] The SAMHSA, *Highlights for the 2021 National Survey on Drug Use and Health*, p. 2, available at https://www.samhsa.gov/data/sites/default/files/2022-12/2021NSDUHFFRHighlights092722.pdf (last visited February 8, 2023).
[7] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited February 8, 2023).

during 2021 (the last year for which there is complete data), an increase of nearly 15% from the 93,655 deaths estimated in 2020.[8]

Substance Abuse Treatment in Florida

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[9] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[10] Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.[11] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[12] In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[13]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[14] However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.[15] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[16]

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery for children and adults who are otherwise unable to obtain these services. Services are provided based upon state and federally-established priority populations.[17] The DCF provides treatment for SUD through a community-based provider system offering detoxification, treatment, and recovery support for individuals affected by substance misuse, abuse, or dependence.[18]

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[8] The Center for Disease Control and Prevention, National Center for Health Statistics, *U.S. Overdose Deaths In 2021 Increased Half as Much as in 2020 – But Are Still Up 15%*, available at https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm (last visited February 8, 2023).
[9] The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Committee on Children, Families, and Elder Affairs).
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] Chapter 93-39, s. 2, L.O.F., which codified current ch. 397, F.S.
[14] *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[15] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited February 8, 2023) (hereinafter cited as "Fundamentals of the Marchman Act").
[16] *Id*.
[17] *See* chs. 394 and 397, F.S.
[18] The DCF, *Treatment for Substance Abuse*, available at https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml (last visited February 8, 2023).

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.[19]
- **Treatment Services:** Treatment services[20] include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their ability to control their substance use on their own and require formal, structured intervention and support.[21]
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.[22]

Licensure of Substance Abuse Service Providers

The DCF regulates substance use disorder treatment by licensing individual treatment components under ch. 397, F.S., and Rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,[23] intervention,[24] and clinical treatment services.[25]

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.[26] "Clinical treatment services" include, but are not limited to, the following licensable service components:

- Addictions receiving facility.
- Day or night treatment.
- Day or night treatment with community housing.
- Detoxification.
- Intensive inpatient treatment.
- Intensive outpatient treatment.
- Medication-assisted treatment for opiate addiction.

[19] *Id*.
[20] *Id*. Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child-protective system, employment, increased earnings, and better health.
[21] *Id*.
[22] *Id*.
[23] Section 397.311(26)(c), F.S. "Prevention" is defined as "a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles". Substance abuse prevention is achieved through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, in recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments. *See also*, The DCF, *Substance Abuse: Prevention*, available at https://www.myflfamilies.com/service-programs/samh/prevention/index.shtml (last visited February 8, 2023).
[24] Section 397.311(26)(b), F.S. "Intervention" is defined as "structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems."
[25] Section 397.311(26), F.S.
[26] Section 397.311(26)(a), F.S.

- Outpatient treatment.
- Residential treatment.[27]

Florida does not license recovery residences. Instead, in 2015 the Legislature enacted ss. 397.487 through 397.4872, F.S., which establish voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[28]

Day or Night Treatment with Community Housing

The DCF licenses "Day or Night Treatment" facilities both with and without community housing components. Day or night treatment programs provide substance use treatment as a service in a nonresidential environment, with a structured schedule of treatment and rehabilitative services.[29] Day or night treatment programs with community housing are intended for individuals who can benefit from living independently in peer community housing while participating in treatment services for a minimum of 5 hours a day or 25 hours per week.[30]

Day or night treatment with community housing is appropriate for individuals who do not require structured, 24-hours-a-day, 7-days-a-week residential treatment.[31] The housing must be provided and managed by the licensed service provider, including room and board and any ancillary services such as supervision, transportation, and meals. Activities for day or night treatment with community housing programs emphasize rehabilitation and treatment services using multidisciplinary teams to provide integration of therapeutic and family services.[32] This component allows individuals to live in a supportive, community housing location while participating in treatment. Treatment must not take place in the housing where the individuals live, and the housing must be utilized solely for the purpose of assisting individuals in making a transition to independent living.[33] Individuals who are considered appropriate for this level of care:

- Would not have active suicidal or homicidal ideation or present a danger to self or others;
- Are able to demonstrate motivation to work toward independence;
- Are able to demonstrate a willingness to live in supportive community housing;
- Are able to demonstrate commitment to comply with rules established by the provider;
- Are not in need of detoxification or residential treatment; and
- Typically need ancillary services such as transportation, assistance with shopping, or assistance with medical referrals and may need to attend and participate in certain social and recovery oriented activities in addition to other required clinical services.[34]

Services provided by such programs may include:

- Individual counseling;
- Group counseling;

[27] *Id*.
[28] Chapter 2015-100, L.O.F.
[29] Section 397.311(26)(a)2., F.S.
[30] Section 397.311(26)(a)3., F.S.
[31] Rule 65D-30.0081(1), F.A.C.
[32] *Id*.
[33] *Id*.
[34] *Id*.

- Counseling with families or support system;
- Substance-related and recovery-focused education, such as strategies for avoiding substance use or relapse, information regarding health problems related to substance use, motivational enhancement, and strategies for achieving a substance-free lifestyle;
- Life skills training such as anger management, communication skills, employability skills, problem solving, relapse prevention, recovery management, decision-making, relationship skills, symptom management, and food purchase and preparation;
- Expressive therapies, such as recreation therapy, art therapy, music therapy, or dance (movement) therapy to provide the individual with alternative means of self-expression and problem resolution;
- Training or provision of information regarding health and medical issues;
- Employment or educational support services to assist individuals in becoming financially independent;
- Nutrition education; and
- Mental health services for the purpose of:
  - Managing individuals with disorders who are stabilized,
  - Evaluating individuals' needs for in-depth mental health assessment,
  - Training individuals to manage symptoms; and
  - If the provider is not staffed to address primary mental health problems that may arise during treatment, the provider shall initiate a timely referral to an appropriate provider for mental health crises or for the emergence of a primary mental health disorder in accordance with the provider's policies and procedures.[35]

Each enrolled individual must receive a minimum of 25 hours of service per week, including:
- Counseling;
- Group counseling; or
- Counseling with families or support systems.[36]

Each provider is required to arrange for or provide transportation services, if needed and as appropriate, to clients who reside in community housing.[37] Each provider must have an awake, paid employee on the premises at all times at the treatment location when one or more individuals are present.[38] For adults, the provider must have a paid employee on call during the time when individuals are at the community housing location.[39] In addition, the provider must have an awake, paid employee at the community housing location at all times if individuals under the age of 18 are present.[40] No primary counselor may have a caseload that exceeds 15 individuals.[41] For individuals in treatment who are granted privilege to self-administer their own medications, provider staff are not required to be present for the self-administration.[42]

[35] Rule 65D-30.0081(2), F.A.C.
[36] Rule 65D-30.0081(4), F.A.C.
[37] Rule 65D-30.0081(5), F.A.C.
[38] Rule 65D-30.0081(6), F.A.C.
[39] *Id*.
[40] *Id*.
[41] Rule 65D-30.0081(7), F.A.C.
[42] Rule 65D-30.0081(8), F.A.C.

Application for Licensure

Individuals applying for licensure as substance abuse service providers must submit applications on specified forms provided, and in accordance with rules adopted by the DCF.[43] Applications must include, at a minimum:

- Information establishing the name and address of the applicant service provider and its director, and also of each member, owner, officer, and shareholder, if any.
- Information establishing the competency and ability of the applicant service provider and its director to carry out the requirements of ch. 397, F.S.
- Proof satisfactory to the DCF of the applicant service provider's financial ability and organizational capability to operate in accordance with ch. 397, F.S.
- Proof of liability insurance coverage in amounts set by the DCF by rule.
- Sufficient information to conduct background screening for all owners, directors, chief financial officers, and clinical supervisors as provided in s. 397.4073, F.S.
- Proof of satisfactory fire, safety, and health inspections, and compliance with local zoning ordinances.[44]
- A comprehensive outline of the proposed services, including sufficient detail to evaluate compliance with clinical and treatment best practices, for:
  - Any new applicant; or
  - Any licensed service provider adding a new licensable service component.
- Proof of the ability to provide services in accordance with the DCF rules.
- Any other information that the DCF finds necessary to determine the applicant's ability to carry out its duties under this chapter and applicable rules.
- The names and locations of any recovery residences to which the applicant service provider plans to refer patients or from which the applicant service provider plans to accept patients.[45]

Inspections and Classifications of Violations

The DCF has the right to enter and inspect a licensed provider at any time to determine statutory and regulatory compliance and may inspect suspected unlicensed providers.[46] The DCF is required to accept, in lieu of its own inspections for licensure, the survey or inspection of an accrediting organization, if the provider is accredited and the DCF receives the report of the accrediting organization.[47] A designated and authorized agent of the DCF may access the records of the individuals served by licensed service providers, but only for purposes of licensing, monitoring, and investigation.[48] The DCF's authorized agents may schedule periodic inspections of licensed service providers in order to minimize costs and the disruption of services, however they may inspect the facilities of any licensed service provider at any time.[49]

[43] Section 397.403(1), F.S.
[44] Service providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department issuing a probationary license. Section 397.403(1)(f), F.S.
[45] Section 397.403(1), F.S.
[46] Section 397.411(1)(a), F.S.
[47] Section 397.411(2), F.S.
[48] Section 397.411(3), F.S.
[49] Section 397.411(4), F.S.

In an effort to coordinate inspections among agencies, the DCF is required to notify applicable state agencies of any scheduled licensure inspections of service providers jointly funded by the agencies.[50] The DCF is required to maintain as public information, available to any person upon request and upon payment of a reasonable charge for copying, copies of licensure reports of licensed providers.[51]

Rule violations are classified according to the nature of the violation and the gravity of its probable effect on an individual receiving substance abuse treatment.[52] Violations are classified on written notices as follows:

- Class "I" violations are those conditions or occurrences related to the operation and maintenance of a service component or to the treatment of an individual which the DCF determines present an imminent danger or a substantial probability of death or serious physical or emotional harm. The condition or practice constituting a class I violation must be abated or eliminated within 24 hours, unless a fixed period, as determined by the DCF, is required for correction. The DCF is required to impose an administrative fine for a cited class I violation. Fines are levied notwithstanding the correction of the violation.[53]
- Class "II" violations are those conditions or occurrences related to the operation and maintenance of a service component or to the treatment of an individual which the DCF determines directly threaten the physical or emotional health, safety, or security of the individual, other than class I violations. The DCF is required to impose an administrative fine for a cited class II violation. Fines are levied notwithstanding the correction of the violation.[54]
- Class "III" violations are those conditions or occurrences related to the operation and maintenance of a service component or to the treatment of an individual which the DCF determines indirectly or potentially threaten the physical or emotional health, safety, or security of the individual, other than class I or class II violations. The DCF is required to impose an administrative fine for a cited class III violation. A citation for a class III violation must specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, the DCF may not impose a fine.[55]
- Class "IV" violations are conditions or occurrences related to the operation and maintenance of a service component or to required reports, forms, or documents that do not have the potential of negatively affecting an individual. These violations are of a type that the DCF determines do not threaten the health, safety, or security of an individual. The DCF is required to impose an administrative fine for a cited class IV violation. A citation for a class IV violation must specify the time within which the violation is required to be corrected. If a class IV violation is corrected within the time specified, the DCF may not impose a fine.[56]

[50] Section 397.411(5), F.S.
[51] Section 397.411(6), F.S.
[52] Section 397.411(7), F.S.
[53] Section 397.411(7)(a), F.S.
[54] Section 397.411(7)(b), F.S.
[55] Section 397.411(7)(c), F.S.
[56] Section 397.411(7)(d), F.S.

Recovery Residences

Recovery residences (also known as "sober homes" or "sober living homes") are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.[57] These residences offer no formal treatment and are, in some cases, self-funded through resident fees.[58]

A recovery residence is defined as "a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment."[59]

Voluntary Certification of Recovery Residences and Administrators in Florida

Florida utilizes voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[60] Under the voluntary certification program, the DCF has approved two credentialing entities to design the certification programs and issue certificates: the Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board (the FCB) certifies recovery residence administrators.[61]

Credentialing entities must require prospective recovery residences to submit the following documents with a completed application and fee:

- A policy and procedures manual containing:
  - Job descriptions for all staff positions;
  - Drug-testing procedures and requirements;
  - A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed;
  - Policies to support a resident's recovery efforts; and
  - A good neighbor policy to address neighborhood concerns and complaints.
- Rules for residents;
- Copies of all forms provided to residents;
- Intake procedures;
- Sexual predator and sexual offender registry compliance policy;
- Relapse policy;
- Fee schedule;

[57] The SAMSHA, *Recovery Housing: Best Practices and Suggested Guidelines*, p. 2, available at https://www.samhsa.gov/sites/default/files/housing-best-practices-100819.pdf (last visited February 8, 2023).
[58] However, these homes may mandate or strongly encourage attendance at 12-step groups. The Society for Community Research and Action, *Statement on Recovery Residences: The Role of Recovery Residences in Promoting Long-term Addiction Recovery*, available at https://www.scra27.org/what-we-do/policy/policy-position-statements/statement-recovery-residences-addiction/ (last visited February 8, 2023).
[59] Section 397.311(38), F.S.
[60] Sections 397.487–397.4872, F.S.
[61] The DCF, *Recovery Residence Administrators and Recovery Residences*, available at https://www.myflfamilies.com/service-programs/samh/recovery-residence/ (last visited February 8, 2023).

- Refund policy;
- Eviction procedures and policy;
- Code of ethics;
- Proof of insurance;
- Proof of background screening; and
- Proof of satisfactory fire, safety, and health inspections.[62]

Patient Referrals

While certification is voluntary, Florida law incentivizes certification. Since 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator (CRRA).[63] There are certain exceptions that allow referrals to or from uncertified recovery residences, including any of the following:

- A licensed service provider under contract with a behavioral health managing entity.
- Referrals by a recovery residence to a licensed service provider when the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral.
- Referrals made before July 1, 2018, by a licensed service provider to that licensed service provider's wholly owned subsidiary.
- Referrals to, or accepted referrals from, a recovery residence with no direct or indirect financial or other referral relationship with the licensed service provider, and that is democratically operated by its residents pursuant to a charter from an entity recognized or sanctioned by Congress, and where the residence or any resident of the residence does not receive a benefit, directly or indirectly, for the referral.[64]

Service providers are required to record the name and location of each recovery residence that the provider has referred patients to or received referrals from in the DCF's Provider Licensure and Designations System.[65] Prospective service providers must also include the names and locations of any recovery residences which they plan to refer patients to, or accept patients from, on their application for licensure.[66]

III. Effect of Proposed Changes:

Substance Use Prohibition

The bill requires applicants for licensure as substance abuse service providers with the DCF to provide proof of a prohibition on the premises against the following substances:

- Alcohol;
- Marijuana, including marijuana certified by a qualified physician for medical use;[67]

[62] Section 397.487(3), F.S.
[63] Section 397.4873(1), F.S.
[64] Section 397.4873(2)(a)-(d), F.S.
[65] Section 397.4104(1), F.S.
[66] Section 397.403(1)(j), F.S.
[67] In Florida, a recommendation for medical marijuana from a physician is not considered to be a prescription because marijuana is a Schedule I controlled substance and, under federal law, "has no currently accepted medical use in treatment in

- Illegal drugs; and
- Prescription drugs used by persons other than for whom the medication is prescribed.

The bill also requires the DCF to include a prohibition on any of these substances on the premises as a licensing requirement for substance abuse service providers. This provision aligns the licensed service providers with the prohibited substances policy with which the certified recovery residences must comply.

The bill prohibits licensed substance abuse service providers from making referrals of prospective, current, or discharged patients to, or accepting referrals from, recovery residences which allow the use of any of the aforementioned substances on its premises.

The bill also adds marijuana to the list of substances a credentialing entity must require that a recovery residence list as prohibited in its policy and procedures manual when submitting an application for certification.

Mechanism for Imposing and Collecting Fines

As mentioned above, the DCF has authority to inspect and issue violations to providers who are out of compliance with rule or providers that are suspected of operating while unlicensed. However, the bill requires the DCF to establish a mechanism for the imposition and collection of fines for violations related to inspections of licensed substance abuse service providers to improve the DCF's administrative oversight.

Criminal Penalty for Trespassing

The bill makes it a second degree misdemeanor[68] for any person discharged from a recovery residence to willfully refuse to depart after being warned by the owner or an authorized employee of the recovery residence.

Community Housing Referrals

The bill provides that any referral made by a licensed substance abuse service provider or a recovery residence must include placing the referred patient into the licensed community housing component of the provider's day or night treatment program, regardless of whether the community housing component is affiliated with the service provider.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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the United States." The Florida Department of Law Enforcement, *Criminal Justice Standards and Training Commission Technical Memorandum 2019-03*, available at https://www.fdle.state.fl.us/CJSTC/Publications/Publications/Technical-Memoranda/Documents/2019/TM-2019-03-MedicalMarijuanaUpdates-final3-signedPk.aspx at p. 6. *See also* Section 381.986(1)(k), F.S., which defines "physician certification" to mean "a qualified physician's authorization for a qualified patient to receive marijuana and a marijuana delivery device from a medical marijuana treatment center."

[68] A second degree misdemeanor is punishable by a term of imprisonment not to exceed 60 days and a fine not to exceed $500. Sections 775.083(1)(e) and 775.082(4)(b), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an indeterminate negative fiscal impact to licensed substance abuse service providers, as these providers will need to ensure prohibited substances are not used on the premises. Enforcement of this requirement may require hiring additional staff.

C. Government Sector Impact:

The DCF has stated that the Provider Licensure and Designations System (PLADS) will need to be modified to include monitoring of proof of a provider's prohibition of alcohol, marijuana, illegal drugs, and the use of prescribed medications by any individual other than the individual from whom the medication is prescribed.[69] The DCF has provided an estimate of $20,000 for the modifications, and believes the cost can be absorbed by the existing budget for PLADS enhancements.[70]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[69] The DCF, *Agency Analysis of SB 210* (2023), p. 6 (on file with the Senate Committee on Children, Families, and Elder Affairs).
[70] *Id*.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statues: 397.403, 397.410, 397.411, 397.487, and 397.4873.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 14, 2023:
The Committee Substitute clarifies that the bill's added prohibitions against marijuana on the premises of licensed service providers also apply to marijuana certified by a qualified physician for medical use in accordance with s. 381.986, F.S.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and Senator Harrell

586-02085-23 2023210c1

A bill to be entitled

An act relating to substance abuse services; amending s. 397.403, F.S.; revising application requirements for licensure as a substance abuse service provider; defining the term "marijuana"; amending s. 397.410, F.S.; revising licensure requirements for substance abuse providers; defining the term "marijuana"; amending s. 397.411, F.S.; requiring the Department of Children and Families to establish, by a specified date, a mechanism to impose and collect fines for certain violations of law; amending s. 397.487, F.S.; revising credentialing requirements for recovery residences; defining the term "marijuana"; prohibiting persons discharged from a recovery residence from willfully refusing to depart after being warned by specified persons; providing criminal penalties; amending s. 397.4873, F.S.; prohibiting service providers from referring patients to, or accepting referrals from, specified recovery residences; revising requirements regarding patient referrals for substance abuse service providers and recovery residences; defining the term "marijuana"; requiring the department to establish, by a specified date, a mechanism to impose and collect fines for certain violations of law; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (k) is added to subsection (1) of

586-02085-23 2023210c1

section 397.403, Florida Statutes, to read:

397.403 License application.—

(1) Applicants for a license under this chapter must apply to the department on forms provided by the department and in accordance with rules adopted by the department. Applications must include at a minimum:

(k) Proof of a prohibition on the premises against alcohol, marijuana, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed. For the purposes of this paragraph, "marijuana" includes marijuana that has been certified by a qualified physician for medical use in accordance with s. 381.986.

Section 2. Paragraph (f) is added to subsection (1) of section 397.410, Florida Statutes, to read:

397.410 Licensure requirements; minimum standards; rules.—

(1) The department shall establish minimum requirements for licensure of each service component, as defined in s. 397.311(26), including, but not limited to:

(f) A prohibition on the premises against alcohol, marijuana, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed. For the purposes of this paragraph, "marijuana" includes marijuana that has been certified by a qualified physician for medical use in accordance with s. 381.986.

Section 3. Subsection (8) is added to section 397.411, Florida Statutes, to read:

397.411 Inspection; right of entry; classification of

violations; records.—

(8) The department shall establish a mechanism for the imposition and collection of fines for violations under this section no later than January 1, 2024.

Section 4. Paragraph (a) of subsection (3) of section 397.487, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

397.487 Voluntary certification of recovery residences.—

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(a) A policy and procedures manual containing:

1. Job descriptions for all staff positions.

2. Drug-testing procedures and requirements.

3. A prohibition on the premises against alcohol, marijuana, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed. For the purposes of this subsection, "marijuana" includes marijuana that has been certified by a qualified physician for medical use in accordance with s. 381.986.

4. Policies to support a resident's recovery efforts.

5. A good neighbor policy to address neighborhood concerns and complaints.

(12) Any person discharged from a recovery residence under subsection (11) who willfully refuses to depart after being warned by the owner or an authorized employee of the recovery residence commits the offense of trespass in a recovery residence, a misdemeanor of the second degree, punishable as

provided in s. 775.082 or s. 775.083.

Section 5. Present subsections (3) through (7) of section 397.4873, Florida Statutes, are redesignated as subsections (4) through (8), respectively, a new subsection (3) is added to that section, and present subsections (3) and (6) of that section are amended, to read:

397.4873 Referrals to or from recovery residences; prohibitions; penalties.—

(3) Notwithstanding subsection (2), a service provider licensed under this part may not make a referral of a prospective, current, or discharged patient to, or accept a referral of such patient from, a recovery residence that allows on its premises the use of alcohol, marijuana, or illegal drugs or the use of prescribed medications by an individual other than the individual for whom the medication is prescribed. For the purposes of this subsection, "marijuana" includes marijuana that has been certified by a qualified physician for medical use in accordance with s. 381.986.

(4)(a) ~~(3)~~ For purposes of this section, a licensed service provider or recovery residence shall be considered to have made a referral if the provider or recovery residence has informed a patient by any means about the name, address, or other details of a recovery residence or licensed service provider, or informed a licensed service provider or a recovery residence of any identifying details about a patient.

(b) A referral shall also include the placement of a patient by a licensed service provider into the housing component of the provider's day or night treatment, which has a community housing license, regardless of whether the community

housing component is affiliated with the licensed service provider.

(7) ~~(6)~~ A licensed service provider that violates this section is subject to an administrative fine of $1,000 per occurrence. If such fine is imposed by final order of the department and is not subject to further appeal, the service provider shall pay the fine plus interest at the rate specified in s. 55.03 for each day beyond the date set by the department for payment of the fine. If the service provider does not pay the fine plus any applicable interest within 60 days after the date set by the department, the department shall immediately suspend the service provider's license. Repeat violations of this section may subject a provider to license suspension or revocation pursuant to s. 397.415. The department shall establish a mechanism no later than January 1, 2024, for the imposition and collection of fines for violations under this section.

Section 6. This act shall take effect July 1, 2023.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/SB 232
INTRODUCER:	Criminal Justice Committee and Senator Garcia
SUBJECT:	Exploitation of Vulnerable Persons
DATE:	March 22, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Stokes	CJ	**Fav/CS**
3.	Erickson	Yeatman	FP	**Pre-Meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 232 creates s. 817.5695, F.S., which punishes exploitation of a person 65 years of age or older by:

- Obtaining or using, through deception or intimidation, the property of a person 65 years of age or older with the intent to temporarily or permanently:
  - Deprive that person of the use, benefit, or possession of the property; or
  - Benefit someone other than the property owner;
- Obtaining or using, through deception or intimidation, the property of a person 65 years of age or older through the intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust instrument, or other testamentary device of the person 65 years of age or older; or
- Depriving, with the intent to defraud and by means of bribery or kickbacks, a person 65 years of age or older of his or her intangible right to honest services provided by an individual who has a legal or fiduciary relationship with such person.

If the funds, assets, or property involved in the exploitation are valued at:

- $50,000 or more, the offender commits a level 7 first degree felony.
- $10,000 or more, but less than $50,000, the offender commits a level 6 second degree felony.
- Less than $10,000, the offender commits a level 4 third degree felony.

It does not constitute a defense to a prosecution for any violation of this section that the accused did not know the age of the victim.

In a prosecution for a violation of s. 817.5695, F.S., the state may move the court to advance a trial on the court's docket and the court must consider the victim's age and health in determining whether to advance the trial.

A person 65 years of age or older who is in imminent danger of being exploited may petition for an injunction for protection under s. 825.1035, F.S.

Prosecution for a felony violation of s. 817.5695, F.S., s. 825.102, F.S. (abuse of an elderly person or disabled adult), or s. 825.103, F.S. (exploitation of an elderly person or disabled adult) must be commenced within five years after the crime is committed, but if fraud or breach of fiduciary duty is a material element of the offense, the offense may be prosecuted within five years after discovery of the offense.

The Legislature's Office of Economic and Demographic Research preliminary estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2023.

II. Present Situation:

Trends Regarding Elder Exploitation

"The National Council on Aging estimates that 1 in 10 Americans over the age of 60 have experienced elder abuse," which can include financial exploitation.[1] According to the most recent report by the Federal Bureau of Investigation (FBI), "[i]n 2021, over 92,000 victims over the age of 60 reported losses of $1.7 billion to the [Internet Crime Complaint Center or "IC3"].[2] This represents a 74 percent increase in losses over losses reported in 2020."[3] Average loss per victim was $18,246.[4]

According to the FBI's report, Florida ranked second in the nation in fraud victims over age 60 (9,645) with losses from that fraud reported to be $224,205,716.[5]

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[1] *Elder Justice*, National Association of Attorneys General, available at https://www.naag.org/issues/elder-justice/ (last visited on Feb. 28, 2023). *See Get the Facts on Elder Abuse* (Feb. 23, 2021), available at https://www.ncoa.org/article/get-the-facts-on-elder-abuse (last visited on Feb. 28, 2023).

[2] The Internet Crime Complaint Center is run by the FBI. *Internet Crime Complaint Center (IC3)*, Federal Bureau of Investigation, available at https://www.ic3.gov/ (last visited on Feb. 28, 2023).

[3] *2021 Elder Fraud Report*, Federal Bureau of Investigation, at p. 3, available at https://www.justice.gov/file/1523276/download (last visited on Feb. 28, 2023). This report is further referenced as "2021 Elder Fraud Report."

[4] *2021 Elder Fraud Report*, *supra*, at p. 4.

[5] *2021 Elder Fraud Report*, *supra*, at pp. 11 and 12. The FBI states: "This information is based on the total number of complaints from each state, American Territory, and the District of Columbia when the complainant provided state information." *Id.*

The elderly are particularly vulnerable to financial exploitation. The problem of elder financial exploitation is likely to get worse because of "three interrelated sets of factors": "health-related effects of aging; financial and retirement trends; and demographic trends."[6]

"Cognitive decline is a key factor ..., even without the presence of disease," and "[p]hysical decline and dependency are also risk factors for elder financial exploitation." "[T]he wealth of older generations" also "makes them targets for financial exploitation."[7] "Paradoxically, though, the elderly poor are at even greater risk of financial exploitation."[8]

"Financial and pension trends further compound the problem." "The shift from defined benefit to defined contribution plans has placed responsibility onto the elderly themselves to manage their retirement savings—ironically, just at a time in their lives when their ability to do so may become impaired." Further, "[r]etirees are also taking on more student debt (often for their children's or grandchildren's benefit)."[9]

Finally, "dramatic increases in the elderly population threaten ... to spur parallel growth in elderly financial exploitation."[10] According to the 2022 U.S. Census, persons over 65 years of age represent approximately 21 percent of Florida's population (nearly 4.7 million Floridians).[11] Further, the U.S. Department of Health and Human Services has provided the following information regarding that demographic trend nationally:

> In 2019, there were 54.1 million people age 65 and older (up from 39.6 million in 2009). The population is projected to reach 80.8 million by 2040 and 94.7 million by 2060. *All but a tiny percentage of them live in non-institutional settings, as do more than 61 million people with disabilities.* Both populations are growing, and older Americans are one of the fastest-growing demographics in the country.[12]

Florida Laws Relating to Elder Exploitation

Exploitation of an Elderly Person or Disabled Adult under s. 825.103, F.S.

Section 825.103, F.S., punishes exploitation of an elderly person or disabled adult.

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[6] Deane, Stephen. *Elder Financial Exploitation* (white paper) (June 2018), at p. i, U.S. Securities and Exchange Commission (SEC), Office of the Investor Advocate, available at https://www.sec.gov/files/elder-financial-exploitation.pdf (last visited on Feb. 28, 2023). Views expressed in the white paper are those of the author and do not necessarily reflect the views of the SEC. This white paper is further referenced as "Elder Financial Exploitation."

[7] *Elder Financial Exploitation*, *supra.* According to the American Bankers Association, "people over 50 years old control over 70 percent of the nation's wealth." *Protect the Elderly from Financial Exploitation*, American Bankers Association, available at https://www.aba.com/advocacy/community-programs/consumer-resources/protect-your-money/elderly-financial-abuse (last visited on Feb. 28, 2023).

[8] *Elder Financial Exploitation*, *supra.*

[9] *Id*.

[10] *Id.*

[11] *QuickFacts Florida*, U.S. Census Bureau, available at https://www.census.gov/quickfacts/fact/table/FL/PST045222#PST045222 (last visited on Feb. 28, 2023).

[12] *Projected Future Growth of Older Population*, U.S. Department of Health and Human Services, Administration for Community Living, available at https://acl.gov/aging-and-disability-in-america/data-and-research/projected-future-growth-older-population (last visited on Feb. 28, 2023). Emphasis provided by staff.

For purposes of ch. 825, F.S., an "elderly person" is a person 60 years of age or older[13] who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.[14]

For purposes of ch. 825, F.S., a "disabled person" is a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.[15]

As is evident from these definitions, ch. 825, F.S., in general, and s. 825.103, F.S., in particular, only address exploitation of a subset of persons 65 years of age or older who are the victims of exploitation.

Under s. 825.103, F.S., exploitation of an elderly person or disabled adult means:

- Knowingly obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:
  - Stands in a position of trust and confidence with the elderly person or disabled adult; or
  - Has a business relationship with the elderly person or disabled adult;
- Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;
- Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, kickback, or receipt of an improper benefit. An unauthorized appropriation occurs when the elderly person or disabled adult does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:
  - For agents appointed under ch. 709, F.S.[16]:
    - Committing fraud in obtaining their appointments;
    - Obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary;
    - Abusing their powers;
    - Wasting, embezzling, or intentionally mismanaging the assets of the principal or beneficiary; or
    - Acting contrary to the principal's sole benefit or best interest; or

[13] Lack of knowledge of the victim's age is not defense to prosecution for any violation under ch. 825, F.S. Section 825.104, F.S.
[14] Section 825.101(4), F.S.
[15] Section 825.101(3), F.S.
[16] A person granted authority to act for a principal under a power of attorney. Section 709.2102(1), F.S.

  - For guardians and trustees who are individuals and who are appointed under ch. 736, F.S., or ch. 744, F.S.:
    - Committing fraud in obtaining their appointments;
    - Obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary;
    - Abusing their powers; or
    - Wasting, embezzling, or intentionally mismanaging the assets of the ward or beneficiary of the trust;
- Misappropriating, misusing, or transferring without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer. This provision only applies to the following types of accounts:
  - Personal accounts;
  - Joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to moneys deposited into such account; or
  - Convenience accounts created in accordance with s. 655.80, F.S.;
- Intentionally or negligently failing to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the elderly person or disabled adult; or
- Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or a disabled adult's funds, assets, property, or estate through intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the elderly person or disabled adult without:
  - A court order, from a court having jurisdiction over the elderly person or disabled adult, which authorizes the modification or alteration;
  - A written instrument executed by the elderly person or disabled adult, sworn to and witnessed by two persons who would be competent as witnesses to a will, which authorizes the modification or alteration; or
  - Action of an agent under a valid power of attorney executed by the elderly person or disabled adult which authorizes the modification or alteration.[17]

Punishment of any of the previously-described violations is based on the value of the funds, assets, or property involved in the exploitation of the elderly person or disabled adult:

- Level 8[18] first degree felony[19] (value is $50,000 or more);

[17] Section 825.103(1), F.S.

[18] The Criminal Punishment Code (Code) (ss. 921.002-921.0027, F.S.) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Section 921.0022(2), F.S. Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Section 921.0024, F.S. Sentence points escalate as the severity level escalates. These points are relevant to determining whether the offender scores a prison sentence as the minimum sentence, and if so scored, the length of that sentence. *Id.* The offense severity ranking is either assigned by specifically ranking the offense in the Code offense severity level ranking chart (s. 921.0022(3), F.S) or ranking the offense by "default" based on its felony degree (s. 921.0023, F.S.).

[19] A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding $10,000. Sections 775.082 and 775.083, F.S.

- Level 7 second degree felony[20] (value is 10,000 or more, but less than $50,000); and
- Level 6 third degree felony[21] (value is less than $10,000).[22]

Statute of Limitations for Violations of s. 825.103, F.S.

Generally, prosecutors have five years to prosecute a violation of s. 825.103, F.S.[23] However, if the period of limitation has expired, a prosecution may be commenced for any offense, a material element of which is fraud, or breach of a fiduciary obligation within one year after discovery of the offense by an aggrieved party or person who has a legal duty to represent an aggrieved party and who is not himself or herself a party.[24] The period of limitation may not be extended by more than three years.[25]

Injunctive Relief

Section 825.1035, F.S., creates a cause of action for an injunction for protection against exploitation[26] of a vulnerable adult[27] which may be sought in an adversary proceeding by:

- A vulnerable adult in imminent danger of being exploited;
- The guardian of a vulnerable adult in imminent danger of being exploited;
- A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian;
- An agent under a valid durable power of attorney with the authority specifically granted in the power of attorney; or
- A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.[28]

In determining whether a petitioner has reasonable cause to believe that the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation, the court must consider and evaluate all relevant factors, including, but not limited to, any of the following:

- The existence of a verifiable order of protection issued previously or from another jurisdiction.
- Any history of exploitation by the respondent upon the vulnerable adult in the petition or any other vulnerable adult.
- Any history of the vulnerable adult being previously exploited or unduly influenced.
- The capacity of the vulnerable adult to make decisions related to his or her finances and property.

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[20] A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding $10,000. Sections 775.082 and 775.083, F.S.
[21] A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding $5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).
[22] Sections 825.103(3)(a)-(c) and 921.0022(3)(f)-(h), F.S. Chapter 825, F.S., is not intended to impose criminal liability on a person who makes a good faith effort to assist an elderly person or disabled adult in the management of the funds, assets, or property of the elderly person or disabled adult, which effort fails through no fault of the person. Section 825.105, F.S.
[23] Section 775.15(10), F.S.
[24] Section 775.15(12(a), F.S.
[25] *Id.*
[26] Exploitation means exploitation of an elderly person or disabled adult under s. 825.103(1), F.S. Section 825.101(6), F.S.
[27] *See* discussion of the definition of "vulnerable adult," *supra*.
[28] Section 825.1035(2), F.S.

- Susceptibility of the vulnerable adult to undue influence.
- Any criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.[29]

Mandatory Reporting of Elder Exploitation

Section 415.103, F.S., requires any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been exploited to immediately report such knowledge or suspicion to the central abuse hotline operated by the Department of Children and Family Services.[30] For purposes of both ch. 415, F.S., and ch. 825, F.S., a "vulnerable adult" is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.[31]

Although the reporting is mandatory for any person, the law specifically mentions reporting by specified professionals, employees, or entities such as:

- Medical personnel engaged in the admission, examination, care, or treatment of vulnerable adults;
- Professional adult care, residential, or institutional staff;
- A bank, savings and loan, or credit union officer, trustee, or employee; or
- Dealer, investment adviser, or associated person under ch. 517, F.S.[32]

It is a second degree misdemeanor[33] for a person to knowingly and willfully fail to report a case of known or suspected exploitation of a vulnerable adult or prevent another person from doing so.[34]

Disqualifications and Forfeitures Relating to the Commission of Elder Exploitation

Section 733.303, F.S., in part, establishes that a person is not qualified to act as a personal representative if the person has been convicted in any state or foreign jurisdiction of exploitation of an elderly person or a disabled adult, as those terms are defined in s. 825.101, F.S.

Section 732.8031, F.S., in part, specifies when benefits or interests of a deceased elderly person or disabled adult are forfeited by certain persons who are convicted in any state or foreign jurisdiction of exploitation of an elderly person or a disabled adult, as those terms are defined in s. 825.101, F.S.:

- A surviving person convicted of such exploitation for conduct against the decedent or another person on whose death such beneficiary's interest depends is not entitled to any benefits under the will of the decedent or the Florida Probate Code.

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[29] Section 825.1035(6), F.S.
[30] *See Abuse Hotline*, Florida Department of Children and Families, available at https://www.myflfamilies.com/service-programs/abuse-hotline/report-online.shtml (last visited on Feb. 28, 2023).
[31] Sections 415.102(28) and 825.101(16), F.S.
[32] Section 415.1034(1), F.S.
[33] A second degree misdemeanor is punishable by not more than 60 days in county jail and a fine not exceeding $500. Sections 775.082 and 775.083, F.S.
[34] Section 415.111(1), F.S.

- A joint tenant convicted in any state or foreign jurisdiction of abuse, neglect, exploitation, or aggravated manslaughter of such exploitation against another joint tenant decedent thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's sole property.
- A named beneficiary of a bond, life insurance policy, or other contractual arrangement convicted of such exploitation for conduct against the owner or principal obligee of the bond, life insurance policy, or other contractual arrangement or the person upon whose life such policy was issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the bond, policy, or other contractual arrangement becomes payable as though the abuser, neglector, exploiter, or killer had predeceased the decedent.[35]

Duties of Securities Dealer and Investment Adviser to Protect Elderly from Exploitation

Section 517.34, F.S., imposes certain duties on a dealer or investment adviser to protect a specified adult from financial exploitation. A "specified adult" is a natural person 65 years of age or older, or a vulnerable adult as defined in s. 415.102, F.S.[36] "Financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult; or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to:

- Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property; or
- Convert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.[37]

A securities dealer or investment adviser may delay a disbursement or transaction of funds or securities from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if certain criteria are met including that the securities dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction. The delay is for a specified, limited period, and there are requirements relating to training, policy and procedure, notice, and records disclosure that must be met regarding the delay.[38]

White Color Crime and Elder Exploitation

Enhanced penalties are available under s. 775.0844, F.S., the White Collar Crime Victim Protection Act. "White collar crime" includes the commission of, or a conspiracy to commit, any felony offense specified in ch. 825, F.S., felony theft offenses under ch. 812, F.S., and various felony theft and fraud offenses.[39] A person commits an "aggravated white collar crime" if the person engages in at least two white collar crimes that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents, provided that at least one of such

[35] Section 732.8031(1)-(3), F.S.
[36] Section 517.34(1)(b), F.S.
[37] Section 517.34(1)(a), F.S.
[38] Section 517.34(3) and (4), F.S.
[39] Section 775.0844(3)(a)2., 4., 5., and 11., and (b)-(d), F.S.

crimes occurred after the effective date of this act.[40] Any person who commits an aggravated white collar crime and in so doing victimizes 10 or more elderly persons, as defined in s. 825.101, F.S., and thereby obtains or attempts to obtain $50,000 or more, commits a Level 9 first degree felony.[41]

Racketeering and Elder Exploitation

The Florida Racketeer Influenced and Corrupt Organization (RICO) Act is found at ss. 895.01-895.06, F.S. "Racketeering activity" means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any exploitation of an elderly person or disabled adult.[42]

Section 895.03, F.S., provides that it is unlawful for any person:

- Who with criminal intent has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

Section 895.04(1), F.S., punishes as a first degree felony engaging in activity in violation of s. 895.03, F.S. In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.[43]

Enhanced Penalties under s. 812.0145, F.S., for Theft When Victim Is 65 Years of Age or Older

Section 812.0145(2), F.S., reclassifies the degree of theft when the victim of the theft is a person 65 years of age or older.[44] Reclassification is based on the value of the funds, assets, or property involved in the theft:

- Level 7 first degree felony (value is $50,000 or more);
- Level 5 second degree felony (value is 10,000 or more, but less than $50,000); or
- Level 3 third degree felony (value is $300 or more, but less than $10,000).

[40] Section 775.0844(4), F.S.
[41] Section 775.0844(5), F.S. A person convicted of an aggravated white collar crime may pay a fine of $500,000 or double the value of the pecuniary gain or loss, whichever is greater. Further, this person is liable for all court costs and must pay restitution to each victim of the crime. Section 775.0844(7), F.S.
[42] Section 895.02(8), F.S.
[43] Section 895.05(2), F.S.
[44] The perpetrator must know or have reason to believe that the victim was 65 years of age or older. Section 812.0145(2), F.S.

Additionally, a person who is convicted of theft of more than $1,000 from a person 65 years of age or older must be ordered by the sentencing judge to make restitution to the victim of such offense and to perform up to 500 hours of community service work. Restitution and community service work are in addition to any fine or sentence which may be imposed and not in lieu thereof.[45]

Criminal Use of Personal Information of Persons 60 Years of Age or Older

Section 817.568, F.S., punishes criminal use of personal identification information ("identity theft"). Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is 60 years of age or older without first obtaining the consent of that individual or of his or her legal guardian commits a second degree felony.[46]

Honest Service Fraud

The bill, in part, punishes a person for depriving, endeavoring to deprive, or conspiring with another to deprive, with the intent to defraud and by means of bribery or kickbacks, a person 65 years of age or older of his or her *intangible right to honest services* provided by an individual who has a legal or fiduciary relationship with such person.[47]

Federal laws punishing mail and wire fraud use the term "scheme or artifice to defraud,"[48] which 18 U.S.C. s. 1346 defines to include "a scheme or artifice to deprive another of the intangible right of honest services." "Intangible rights" are not defined in federal law. 18 U.S.C. s. 1346, which applies to both public officials and private employees, abrogates the U.S. Supreme Court's holding in *McNally v. United States*[49] "that the mail fraud statute was 'limited in scope' to *only* the 'protection of tangible property rights.'"[50] The statute codifies "the understanding of some of the lower federal courts that the mail and wire fraud statutes extend to conduct that deprives a person or group of the right to have another act in accordance with some externally imposed duty or obligation, regardless of whether the victim so deprived has suffered or would suffer a pecuniary harm."[51] In a subsequent case, *Skilling v. United States*,[52] the U.S. Supreme Court limited prosecutions of mail and wire fraud under an honest services theory to "those who, in

[45] Section 812.0145(1), F.S.
[46] Section 817.568(6), F.S.
[47] Emphasis provided by staff. *See* "Effect of Proposed Changes" section of this analysis for further details.
[48] *See* 18 U.S.C. s. 1341 (mail fraud) and 18 U.S.C. s. 1343 (wire fraud).
[49] 483 U.S. 350 (1987). *Bribery, Kickbacks, and Self-Dealing: A Overview of Honest Services Fraud and Issues for Congress*, R5479 (May 18, 2020), at p. 2, Congressional Research Service, available at https://sgp.fas.org/crs/misc/R45479.pdf (last visited on Feb. 28, 2023). This report is further referenced as "CRS Report."
[50] CRS Report at p. 2, n. 12, citing *McNally*, 438 U.S. at 360. Emphasis provided by author.
[51] CRS Report at p. 2.
[52] 561 U.S. 358 (2010).

violation of a fiduciary duty,[53] participate in bribery or kickback schemes."[54] This "limiting principle" continues to be applied to honest service fraud.[55]

III. Effect of Proposed Changes:

The bill creates s. 817.5695, F.S., which punishes exploitation of a person 65 years of age or older by:

- Obtaining or using,[56] endeavoring[57] to obtain or use, or conspiring with another to obtain or use, through deception[58] or intimidation,[59] the property[60] of a person 65 years of age or older with the intent to temporarily or permanently:
  - Deprive that person of the use, benefit, or possession of the property; or
  - Benefit someone other than the property owner;[61]
- Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use, through deception or intimidation, the property of a person 65 years of age or older through the intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust instrument, or other testamentary devise of the person 65 years of age or older; or

[53] Some of the fiduciary relationships that support an honest-services fraud prosecution include attorney-client, doctor-patient, and stockbroker-customer. CRS Report at p. 17, n. 147, quoting and citing *United States v. Scanlon*, 753 F. Supp. 23, 25 (D.D.C. 2010) and *United States v. Evans*, No. 2:14-CR-00113, 2015 WL 1808904, at *5 (S.D.W. Va. Apr. 21, 2015).
[54] CRS Report at p. 2.
[55] *Id.*
[56] The bill uses the same definition of "obtains or uses" that is found in the theft chapter. *See* s. 812.012(3), F.S.
[57] "Endeavor" means to attempt or to try.
[58] "Deception" means misrepresenting or concealing a material fact relating to: (1) services rendered, disposition of property, or use of property, when such services or property are intended to benefit a person 65 years of age or older; (2) terms of a contract, agreement, trust, will, or testament entered into with a person 65 years of age or older; or (3) an existing or preexisting condition of any property involved in a contract, agreement, trust, will, or testament entered into with a person 65 years of age or older. It also means using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a person 65 years of age or older to enter into a contract, agreement, trust, will, or testament.
[59] "Intimidation" means the communication by word or act to a person 65 years of age or older that the person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.
[60] The bill uses the same definition of "property" that is found in the theft chapter. *See* s. 812.012(4), F.S.
[61] "Deception" and "intimidation" are also terms that are used in the definition of "financial exploitation" in s. 517.34, F.S. "Financial exploitation" is defined in part, as the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult; or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to obtain control over the specified adult's money, assets, or property through *deception, intimidation*, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property. Section 517.34(1)(a)1., F.S. A "specified adult" is a person 65 years of age or older or a vulnerable adult as defined in s. 415.102, F.S. Section 517.34(1)(b), F.S. Section 517.34(2), F.S., provides, in part that the "Legislature finds that many persons in this state, because of age or disability, are at increased risk of financial exploitation and loss of their assets, funds, investments, and investment accounts. The Legislature further finds that senior investors in this state are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups."

- Depriving, endeavoring to deprive, or conspiring with another to deprive, with the intent to defraud and by means of bribery[62] or kickbacks,[63] a person 65 years of age or older of his or her intangible right to honest services[64] provided by an individual who has a legal or fiduciary relationship[65] with such person.

The bill specifies the felony degree of violations based on value[66] of property, etc., involved in the exploitation and amends s. 921.0022, F.S., to rank the felonies in the Code offense severity level ranking chart. If the funds, assets, or property involved in the exploitation are valued at:

- $50,000 or more, the offender commits a level 7[67] first degree felony.
- $10,000 or more, but less than $50,000, the offender commits a level 6 second degree felony.
- Less than $10,000, the offender commits a level 4 third degree felony.

The penalties and rankings are identical to those applicable to theft from a person 65 years of age or older under s. 812.0145, F.S.[68]

It does not constitute a defense to a prosecution for any violation of this section that the accused does not know the victim's age.

In a prosecution for a violation of s. 817.5695, F.S., the state may move the court to advance a trial on the court's docket and the court must consider the victim's age and health in determining whether to advance the trial.[69]

A person 65 years of age or older who is in imminent danger of being exploited may petition for an injunction for protection under s. 825.1035, F.S., which currently applies to a vulnerable adult in imminent danger of being "exploited" (i.e., subject to exploitation as defined in s. 825.103(1), F.S.).[70] A violation of such injunction is handled in the same manner, and such violation has the

[62] A "bribe" is any money or anything of value which is provided, directly or indirectly, to a person who has a legal or fiduciary relationship with a person 65 years of age or older, for the purpose of improperly obtaining or rewarding favorable treatment from the person who has the legal or fiduciary relationship in connection with his or her work for the person 65 years of age or older.

[63] A "kickback" is money, credit, a fee, a commission, a gift, a gratuity or other compensation, or anything of value which is provided to a person in exchange for preferential treatment for the receipt of goods or services.

[64] The bill uses the same definition of "services" that is found in the theft chapter. *See* s. 812.012(6), F.S. Similar to federal law, the bill does not define "intangible right to honorable services." *See* discussion of honest services fraud in the "Present Situation" section of this analysis.

[65] "Fiduciary relationship" includes, but is not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator. As indicated, this definition is not an exhaustive list.

[66] The definition of "value" is almost identical to the definition of that term in the theft chapter. *See* s. 812.012(10), F.S., and allows the amounts of value of separate properties involved in exploitation committed pursuant to one scheme or course of conduct, whether the exploitation involves the same person or several persons, to be aggregated in determining the degree of the offense. *See* s. 812.012(10)(c), F.S.

[67] The rankings of theft from a person 65 years of age or older under s. 812.0145, F.S., are identical to the rankings of offenses under s. 817.5695, F.S., except that the first degree felony in s. 812.0145, F.S., is specifically ranked in level 7 of the Code offense severity level ranking chart (s. 921.0022, F.S.) while the first degree felony in s. 817.5695, F.S., is not ranked in the chart but defaults to a level 7 ranking under s. 921.0023, F.S.

[68] *See* ss. 812.0145(2) and 921.0022(3)(c), (e), and (g), F.S.

[69] This provision is almost identical to s. 825.106, F.S., which authorizes the state to move the court to advance the trial on the court's docket in a criminal action in which an elderly person or disabled adult is the victim. The court must consider the age and the health of the victim in determining whether to advance the trial on the docket.

[70] *See* s. 825.101(6), F.S.

same penalties, as provided in s. 825.1036, F.S. Conforming changes are made to ss. 825.1035 and 825.1036, F.S., to provide additional guidance that as used in those sections, and in addition to the definitions provided in ch. 825, F.S., exploitation of a vulnerable adult includes a person 65 years of age or older who is or may be subject to exploitation as described in s. 817.5695, F.S.

The bill amends s. 775.15, F.S., to provide that prosecution for a felony violation of s. 817.5695, F.S., s. 825.102, F.S. (abuse of an elderly person or disabled adult), or s. 825.103, F.S. (exploitation of an elderly person or disabled adult) must be commenced within five years after the crime is committed, but if fraud or breach of fiduciary duty is a material element of the offense, the offense may be prosecuted within five years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense. This change will provide additional time for prosecution of elder abuse and exploitation.[71]

The bill take effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[71] *See* "Present Situation" section of this analysis for a discussion of time limitations under s. 775.15, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).[72]

The bill creates a level 7 first degree felony, a level 5 second degree felony, and a level 3 third degree felony. The EDR provides the following information relevant to these felonies and its estimate:

> In FY 18-19, the incarceration rate for a Level 3, 3rd degree felony was 9.5%, and in FY 19-20 the incarceration rate was 8.8%. In FY 20-21, the incarceration rate for a Level 3, 3rd degree felony was 8.7%, and in FY 21-22 the incarceration rate was 9.6%. In FY 18-19, the incarceration rate for a Level 5, 2nd degree felony was 35.3%, and in FY 19-20 the incarceration rate was 32.6%. In FY 20-21, the incarceration rate for a Level 5, 2nd degree felony was 32.7%, and in FY 21-22 the incarceration rate was 35.7%. In FY 18- 19, the incarceration rate for a Level 7, 1st degree felony was 67.1%, and in FY 19-20 the incarceration rate was 66.5%. In FY 20-21, the incarceration rate for a Level 7, 1st degree felony was 65.5%, and in FY 21-22 the incarceration rate was 63.1%.
>
> Per [Department of Corrections or "DOC"] ..., in FY 18-19, there were 21 new commitments to prison for felonies listed under s. 825.103, F.S., and 18 new commitments in FY 19-20. There were 12 in FY 20-21, and 14 in FY 21-22. It is not known how the newly created felonies under s. 817.5695, F.S.[,] will impact prison beds, but commitments are low under the current language for exploitation of the elderly or disabled adults.
>
> Per DOC, in FY 18-19, there were 14 new commitments to prison for felonies listed under s. 825.102, F.S., and 11 new commitments in FY 19-20. There were 9 in FY 20-21, and 20 in FY 21-22. It is not known how many additional commitments would be included with the expansion of the time period to prosecute for s. 825.102, F.S., s. 825.103, F.S., or the newly added s. 817.5695[,] F.S.
>
> Per DOC, there has been one new commitment for a violation of s. 825.1036, F.S.[,] in the last four fiscal years.[73]

[72] *SB 232 – Exploitation of Vulnerable Persons*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).
[73] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

817.5695, 775.15, 921.0022, 825.1035, 825.1036
This bill substantially amends the following sections of the Florida Statutes: 775.15, 825.135, 825.1036, and 921.0022.

This bill creates section 817.5695 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 13, 2023:
The committee substitute:

- Punishes obtaining or using, through deception or intimidation, the property of a person 65 years of age or older through the intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust instrument, or other testamentary device of the person 65 years of age or older.
- Provides that it does not constitute a defense to a prosecution for any violation of this section that the accused does not know the victim's age.
- Provides additional guidance that a person 65 years of age or older who is in imminent danger of being exploited may petition for an injunction for protection under s. 825.1035, F.S.
- Ranks exploitation offenses in level 6 if the value of the loss is $10,000 or more, but less than $50,000.
- Ranks exploitation offenses in level 4 if the value of the loss is less than $10,000.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Garcia

591-02498-23 2023232c1

A bill to be entitled

An act relating to the exploitation of vulnerable persons; creating s. 817.5695, F.S.; defining terms; specifying conditions under which a person commits exploitation of a person 65 years of age or older; providing criminal penalties for violations of the act; specifying that not knowing the age of a victim is not a defense to such crime; providing circumstances under which the trial for a criminal action arising from specified violations may be advanced on the docket; authorizing persons who are in imminent danger of exploitation to petition for an injunction for protection; specifying applicable penalties for violations of any such injunction; amending s. 775.15, F.S.; providing time limitations for commencing prosecution for violations of the act; providing an exception for the time limitations for commencing prosecution for certain felony violations involving elderly persons or disabled adults if certain conditions are met; amending ss. 825.1035 and 825.1036, F.S.; specifying that certain acts are included in exploitation of a vulnerable adult; amending s. 921.0022, F.S.; ranking certain offenses created by this act on the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

591-02498-23 2023232c1

Section 1. Section 817.5695, Florida Statutes, is created to read:

817.5695 Exploitation of a person 65 years of age or older.—

(1) As used in this section, the term:

(a) "Bribe" means any money or anything of value which is provided, directly or indirectly, to a person who has a legal or fiduciary relationship with a person 65 years of age or older, for the purpose of improperly obtaining or rewarding favorable treatment from the person who has the legal or fiduciary relationship in connection with his or her work for the person 65 years of age or older.

(b) "Deception" means:

1. Misrepresenting or concealing a material fact relating to:

a. Services rendered, disposition of property, or use of property, when such services or property are intended to benefit a person 65 years of age or older;

b. Terms of a contract, agreement, trust, will, or testament entered into with a person 65 years of age or older; or

c. An existing or preexisting condition of any property involved in a contract, agreement, trust, will, or testament entered into with a person 65 years of age or older; or

2. Using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a person 65 years of age or older to enter into a contract, agreement, trust, will, or testament.

(c) "Endeavor" means to attempt or to try.

(d) "Fiduciary relationship" includes, but is not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator.

(e) "Intimidation" means the communication by word or act to a person 65 years of age or older that the person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

(f) "Kickback" means money, credit, a fee, a commission, a gift, a gratuity or other compensation, or anything of value which is provided to a person in exchange for preferential treatment for the receipt of goods or services.

(g) "Obtains or uses" means any manner of:

1. Taking or exercising control over property; or

2. Making any use, disposition, or transfer of property.

(h) "Property" means anything of value and includes, but is not limited to:

1. Real property, including things growing on, affixed to, or found in land.

2. Tangible or intangible personal property, including intellectual property, rights, privileges, interests, and claims.

3. Services.

(i) "Services" means anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property, and includes, but is not limited to:

1. Repairs or improvements to property;

2. Professional services;

3. Private, public, or governmental communication, transportation, power, water, or sanitation services;

4. Lodging accommodations; or

5. Admissions to places of exhibition or entertainment.

(j) "Value" means value determined according to any of the following:

1. The market value of the property at the time and place of the offense, or, if the market value cannot be satisfactorily ascertained, the value is the cost of replacing the property within a reasonable time after the commission of the offense;

2. In the case of a written instrument, such as a check, draft, or promissory note, which does not have a readily ascertainable market value, the value is the amount due or collectible. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by the diminishment or loss of the instrument;

3. The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner suffered by reason of losing advantage over those who do not know of or use the trade secret; or

4. If the value of the property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than $100.

Amounts of value of separate properties involved in exploitation committed pursuant to one scheme or course of conduct, whether

the exploitation involves the same person or several persons, may be aggregated in determining the degree of the offense.

(2) A person commits exploitation of a person 65 years of age or older if he or she:

(a) Obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use, through deception or intimidation, the property of a person 65 years of age or older, with the intent to temporarily or permanently:

1. Deprive that person of the use, benefit, or possession of the property; or

2. Benefit someone other than the property owner;

(b) Obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use, through deception or intimidation, the property of a person 65 years of age or older through the intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust instrument, or other testamentary devise of the person 65 years of age or older; or

(c) Deprives, endeavors to deprive, or conspires with another to deprive, with the intent to defraud and by means of bribery or kickbacks, a person 65 years of age or older of his or her intangible right to honest services provided by an individual who has a legal or fiduciary relationship with such person.

(3) A person who violates this section commits:

(a) A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the funds, assets, or property involved in the exploitation of a person 65 years of age or older is valued at $50,000 or more.

(b) A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the funds, assets, or property involved in the exploitation of a person 65 years of age or older is valued at $10,000 or more, but less than $50,000.

(c) A felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the funds, assets, or property involved in the exploitation of a person 65 years of age or older is valued at less than $10,000.

(4) It does not constitute a defense to a prosecution for any violation of this section that the accused did not know the age of the victim.

(5) In a criminal action resulting from a violation of this section, the state may move the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the victim, may advance the trial on the docket. The motion may be filed and served with the information or charges at any time thereafter.

(6) Notwithstanding s. 825.1035(2), a person 65 years of age or older who is in imminent danger of being exploited may petition for an injunction for protection as provided under s. 825.1035. A violation of such injunction shall be handled in the same manner, and such violation shall have the same penalties, as provided in s. 825.1036.

Section 2. Subsection (10) of section 775.15, Florida Statutes, is amended to read:

775.15 Time limitations; general time limitations; exceptions.—

(10)(a) A prosecution for a felony violation of s.

817.5695, s. 825.102, or s. 825.103 must be commenced within 5 years after it is committed.

(b) If the period prescribed in paragraph (a) has expired, a prosecution may nevertheless be commenced for any offense, a material element of which is either fraud or a breach of fiduciary obligation, within 5 years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense.

Section 3. Subsection (1) of section 825.1035, Florida Statutes, is amended to read:

825.1035 Injunction for protection against exploitation of a vulnerable adult.—

(1) INJUNCTION CREATED.—There is created a cause of action for an injunction for protection against exploitation of a vulnerable adult. As used in this section, and in addition to the definitions provided in this chapter, exploitation of a vulnerable adult includes a person 65 years of age or older who is or may be subject to exploitation as described in s. 817.5695.

Section 4. Subsection (1) of section 825.1036, Florida Statutes, is amended to read:

825.1036 Violation of an injunction for protection against exploitation of a vulnerable adult.—

(1) In the event of a violation of an injunction for protection against exploitation of a vulnerable adult when the person who violated such injunction has not been arrested, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred. The

clerk of the circuit court shall assist the petitioner in the preparation of an affidavit in support of the violation or direct the petitioner to the office operated by the court within the circuit which has been designated by the chief judge of the judicial circuit as the central intake point for injunction violations and where the petitioner can receive assistance in the preparation of the affidavit in support of the violation. As used in this section, and in addition to the definitions provided in this chapter, exploitation of a vulnerable adult includes a person 65 years of age or older who is or may be subject to exploitation as described in s. 817.5695.

Section 5. Paragraphs (d) and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights

		activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.

784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or

		other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
794.051(1)	3rd	Indecent, lewd, or lascivious touching of certain minors.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
806.135	2nd	Destroying or demolishing a memorial or historic property.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.

810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.

817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.5695(3)(c)	3rd	Exploitation of person 65 years of age or older, value less than $10,000.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
836.14(2)	3rd	Person who commits theft of a sexually explicit image with intent to promote it.

836.14(3)	3rd	Person who willfully possesses a sexually explicit image with certain knowledge, intent, and purpose.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.

843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
870.01(3)	2nd	Aggravated rioting.
870.01(5)	2nd	Aggravated inciting a riot.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a),

		(b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of

		contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.

400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or

		employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act

		of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.

806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $750 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is $3,000 or more; coordination of others.
812.015(9)(d)	2nd	Retail theft; multiple thefts within specified period.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
817.505(4)(b)	2nd	Patient brokering; 10

		or more patients.
817.5695(3)(b)	2nd	Exploitation of person 65 years of age or older, value more than $10,000 but less than $50,000.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.

827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
828.126(3)	3rd	Sexual activities involving animals.
836.05	2nd	Threats; extortion.
836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
918.13(2)(b)	2nd	Tampering with or fabricating physical evidence relating to a capital felony.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.

Section 6. This act shall take effect October 1, 2023.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	SB 248
INTRODUCER:	Senator Martin
SUBJECT:	Public Records/Personal Identifying Information of Certain Victims
DATE:	March 22, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	**Favorable**
2.	Hunter	Yeatman	FP	**Pre-Meeting**

I. Summary:

SB 248 provides a 30 day public records exemption for records held by the Division of Emergency Management identifying a victim of a disaster or emergency in which a state of emergency is declared by the Governor. A "victim" is defined as a person who is critically injured and death appears to be imminent or a person killed during such an event.

The specific personal information made exempt from public records disclosure requirements includes the victim's name, address, date of birth, and home and cellular telephone numbers.

In its statement of public necessity, the bill provides that during and immediately after an emergency or a disaster, a victim and his or her family are in a vulnerable state as they attempt to recover from the emergency situation, and that the public availability of the specified information may leave the victim or the victim's family vulnerable to exploitation from those seeking to take advantage of the victim's misfortune.

The bill is subject to the Open Government Sunset Review Act and is repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

The state constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

[1] FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

Section 119.011(12), F.S., defines "public records" to include:

> All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to "perpetuate, communicate, or formalize knowledge of some type."[6]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

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[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2020-2022).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[9] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[10]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[11] (the Act), prescribe a legislative review process for newly created or substantially amended[12] public records or open meetings exemptions, with specified exceptions.[13] The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[14]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[15] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[16]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however; only personal identifying information is exempt;[17] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[18]

The Act also requires specified questions to be considered during the review process.[19] In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

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[9] FLA. CONST. art. I, s. 24(c).

[10] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

[11] Section 119.15, F.S.

[12] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

[13] Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

[14] Section 119.15(3), F.S.

[15] Section 119.15(6)(b), F.S.

[16] Section 119.15(6)(b)1., F.S.

[17] Section 119.15(6)(b)2., F.S.

[18] Section 119.15(6)(b)3., F.S.

[19] Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[20] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.[21]
General exemptions from the public records requirements are contained in the Public Records Act.[22] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[23]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.[24] Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.[25] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[26]

State Emergency Management Act

The State Emergency Management Act (act), ch. 252, F.S., was enacted to be the legal framework for this state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.[27] In order to reduce the state's vulnerability to these circumstances and to prepare to respond to them, the act promotes the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.[28]

The act creates the Division of Emergency Management (division) within the Executive Office of the Governor and grants the division with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.[29] The responsibilities of the division include:

- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[20] *See generally* s. 119.15, F.S.
[21] Section 119.15(7), F.S.
[22] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[23] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[24] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[25] *Id.*
[26] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[27] Section 252.311(1), F.S.
[28] Section 252.311(2), F.S.
[29] Sections 252.32(1)(a) and 252.34(3), F.S.

- Carrying out the State Emergency Management Act;
- Maintaining a comprehensive statewide program of emergency management; and
- Coordinating with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management. [30]

The act also delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. If the Governor finds that an emergency[31] has occurred or is imminent, he or she must declare a state of emergency.[32] An executive order or proclamation of a state of emergency shall identify whether the state of emergency is due to a minor,[33] major,[34] or catastrophic[35] disaster.[36] The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.[37] Additionally, the Legislature may end a state of emergency by passing a concurrent resolution.[38]

In a state of emergency, the Governor has broad power to perform necessary actions to ensure Floridians' health, safety, and welfare. A state of emergency provides the Governor with additional authority not otherwise present, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property subject to compensation.[39] To effectively facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.[40]

III. Effect of Proposed Changes:

The bill creates s. 252.3591 F.S., to provide a 30 day public records exemption for records held by the Division of Emergency Management identifying victims of a disaster or emergency in which a state of emergency is declared by the Governor. A "victim" is defined as a person who is critically injured and death appears to be imminent or a person killed during such an event.

The specific personal information made exempt from public records disclosure requirements includes the victim's name, address, date of birth, and home and cellular telephone numbers.

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[30] Section 252.35(1) and (2), F.S.
[31] "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property (s. 252.34(4), F.S.).
[32] Section 252.36(2), F.S.
[33] "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance (s. 252.34(2)(c), F.S.).
[34] "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance (s. 252.34(2)(b), F.S.).
[35] "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement (s. 252.34(2)(a), F.S.)
[36] Section 252.36(4)(c), F.S.
[37] *Supra* note 32
[38] Section 252.36(3), F.S.
[39] *See* s. 252.36(6), F.S.
[40] Section 252.36(1)(b), F.S.

The bill provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution, which provides, in part, that during and immediately after an emergency or a disaster, a victim and his or her family are in a vulnerable state as they attempt to recover from the emergency situation, and that the public availability of the victim's name, address, date of birth, and home and cellular telephone numbers may leave the victim or the victim's family vulnerable to exploitation from those seeking to take advantage of the victim's misfortune. The bill is subject to the Open Government Sunset Review Act and is repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for the personal identifying and location information for persons who are critically injured and death appears to be imminent or a person killed, during a disaster or emergency in which a state of emergency is declared by the Governor, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2. of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The stated purpose of the law is to protect victims of a declared state of emergency as the person and their family attempt to recover from such an event, and that personal identifying information may leave a victim or their family vulnerable to exploitation. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may cause the Division of Emergency Management to incur costs associated with redacting the exempt information of disaster victims. However, such costs are likely insignificant and can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

252.3591
252.3591
This bill creates section 252.3591 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Martin

33-00827E-23 2023248__

A bill to be entitled

An act relating to public records; creating s. 252.3591, F.S.; defining the term "victim"; exempting from public records requirements the personal identifying information of certain victims held by the Division of Emergency Management for a specified timeframe; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 252.3591, Florida Statutes, is created to read:

252.3591 Public records exemption; emergency identification and notification information.—

(1) As used in this section, the term "victim" means a critically injured person whose death appears to be imminent or a person killed during a disaster or emergency in which a state of emergency is declared by the Governor pursuant to this chapter.

(2) The name, address, date of birth, and home and cellular telephone numbers of a victim which are held by the division are exempt from s. 119.07(1) and s. 24, Art. I of the State Constitution for 30 days after the date the state of emergency is declared.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal

33-00827E-23 2023248__

through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the names, addresses, dates of birth, and home and cellular telephone numbers of victims of an emergency or disaster in which the Governor has declared a state of emergency be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 30 days after the date the state of emergency is declared. During and subsequent to an emergency or a disaster, a victim and his or her family are in a vulnerable state as they attempt to recover from the emergency situation. The public availability of the victim's name, address, date of birth, and home and cellular telephone numbers may leave the victim or the victim's family vulnerable to exploitation from those seeking to take advantage of the victim's misfortune. The availability of such personal identifying information may also leave the victim's property subject to theft or damage. Additionally, the public availability of the victim's name, address, date of birth, and home and cellular telephone numbers may also leave the victim or the victim's family vulnerable to media intrusion before an emergency official, a law enforcement officer, or other official notifies the victim's emergency contact of the victim's status. Therefore, it is necessary that the name, address, date of birth, and home and cellular telephone numbers of a victim of a declared emergency or disaster be protected to ensure that victims of such incidents, or their families, are not taken advantage of or otherwise subjected to additional pain and suffering.

Section 3. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/SB 250
INTRODUCER:	Community Affairs Committee and Senator Martin
SUBJECT:	Natural Emergencies
DATE:	March 22, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	**Fav/CS**
2.	Hunter	Yeatman	FP	**Pre-Meeting**

I. Summary:

CS/SB 250 makes various changes throughout Florida Statutes regarding the preparation and response activities of local governments when natural emergencies impact the state.

Specifically, the bill:

- Requires the Division of Emergency Management to post on its website a model debris removal contract for the benefit of local governments.
- Encourages local governments to create emergency financial plans in preparation for major natural disasters.
- Provides that counties and municipalities cannot prohibit a resident from placing a temporary residential structure on their property for up to 36 months following a natural emergency under certain circumstances.
- Authorizes local governments to create specialized building inspection teams following a natural disaster and encourages interlocal agreements for additional building inspection services during a state of emergency.
- Requires local governments to expedite the issuance of permits following a natural disaster.
- Increases the extension of certain building permits following a declaration of a state of emergency from six to 24 months and capping such extension at 48 months in the event of multiple natural emergencies.
- Prohibits counties and municipalities within the disaster declaration for Hurricane Ian or Hurricane Nicole from increasing building fees until October 1, 2024.
- Allows registered contractors to engage in contracting for the types of work covered by their registration within areas for which a state of emergency has been declared.
- Prohibits counties and municipalities within the disaster declaration for Hurricane Ian or Hurricane Nicole from adopting more restrictive or burdensome procedures to its comprehensive plan or land development regulations concerning review, approval, or issuance of a site plan, development permit, or development order before October 1, 2024.

- Extends the date for fire control districts to submit the statutorily-required performance reviews in the event of a natural disaster or a major hurricane.
- Amends the Consultants' Competitive Negotiation Act to allow for additional disaster-related construction projects to utilize the "continuing contracts" provision through June 30, 2025.
- Makes the Local Government Emergency Bridge Loan Program a *revolving* program and makes funds available for local governments impacted by federally declared disasters until July 1, 2038. Additionally, the bill appropriates $50 million in nonrecurring funds from the General Revenue Fund to the program.
- Provides clarification regarding the 45 day grace period following a hurricane in which owners must bring a derelict vessel into compliance before being charged with a violation.

The bill takes effect on July 1, 2023, unless otherwise expressly provided.

II. Present Situation:

The present situation for each issue in the bill is described below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Present Situation:

State Emergency Management Act

The State Emergency Management Act, ch. 252, F.S., was enacted to be the legal framework for this state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.[1] In order to reduce the state's vulnerability to these circumstances and to prepare to respond to them, the act promotes the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.[2]

The act creates the Division of Emergency Management (division) within the Executive Office of the Governor and grants the division with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.[3] The responsibilities of the division include:

- Carrying out the State Emergency Management Act;
- Maintaining a comprehensive statewide program of emergency management; and
- Coordinating with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.[4]

The act also delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. If the Governor finds that an

[1] Section 252.311(1), F.S.
[2] Section 252.311(2), F.S.
[3] Sections 252.32(1)(a) and 252.34(3), F.S.
[4] Section 252.35(1) and (2), F.S.

emergency[5] has occurred or is imminent, he or she must declare a state of emergency.[6] An executive order or proclamation of a state of emergency shall identify whether the state of emergency is due to a minor,[7] major,[8] or catastrophic[9] disaster.[10] The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.[11] Additionally, the Legislature may end a state of emergency by passing a concurrent resolution.[12]

In a state of emergency, the Governor has broad power to perform necessary actions to ensure Floridians' health, safety, and welfare. A state of emergency provides the governor with additional authority not otherwise present, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property subject to compensation.[13] To effectively facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.[14]

Through this emergency power, the Governor can suspend the provisions of any regulatory statute if compliance would prevent, hinder, or delay necessary action to deal with the emergency. Further, as designated by the Governor or in emergency management plans, state agencies, local governments, and others can make, amend, and rescind orders and rules as necessary for emergency management purposes. However, these orders and rules cannot conflict with orders of the Governor, the division, or other state agencies delegated emergency powers by the Governor.

Presidential Disaster and Emergency Declarations

When there is a disaster in the United States, the Governor of an affected state must request an emergency and major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.[15] All emergency and disaster declarations are made at the discretion of the President of the United States.[16] There are two types of disaster declarations, emergency

[5] "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. *See* s. 252.34(4), F.S.
[6] Section 252.36(2), F.S.
[7] "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance. *See* s. 252.34(2)(c), F.S.
[8] "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance. *See* s. 252.34(2)(b), F.S.
[9] "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement. *See* s. 252.34(2)(a), F.S.
[10] Section 252.36(4)(c), F.S.
[11] *Supra* note 6.
[12] Section 252.36(3), F.S.
[13] *See* s. 252.36(6), F.S.
[14] Section 252.36(1)(b), F.S.
[15] 2 U.S.C. §§ 5121-5207
[16] FEMA, *How a Disaster Gets Declared*, available at: https://www.fema.gov/disaster/how-declared (last visited March 14, 2023.)

declarations and major disaster declarations.[17] Both declarations allow for federal assistance to states and local governments, however they differ in scope, types, and amount of assistance available.[18] Primary federal disaster assistance administered by the Federal Emergency Management Agency (FEMA) is provided via the Individual Assistance Program and the Public Assistance Grant Program. The scope of an event will determine which categories within each program are available to affected states.

One component of the Public Assistance Grant Program is the provision of direct assistance or reimbursement to state and local governments for the costs of removing debris and wreckage from public and private property.

Effect of Proposed Changes:

Section 1 creates s. 125.023, F.S., to provide that a county must allow for a resident to place a temporary structure on residential property if the permanent residential structure was damaged and rendered uninhabitable during a natural emergency[19] for which the Governor declared a state of emergency. The temporary structure may be placed on the property for up to 36 months after the date of the declaration of emergency or until a certificate of occupancy is issued for the permanent residential structure, whichever occurs first. A temporary structure includes, but is not limited to, a recreational vehicle, trailer, or similar structure.

Residents must live in the temporary structure and be making a good faith effort to rebuild or renovate the damaged permanent residential structure including, but not limited to, applying for a building permit, submitting a plan or design to the county, or obtaining a construction loan. The temporary shelter must be connected to water and electric utilities and cannot present a threat to health and human safety.

Section 2 creates s. 166.0335, F.S., to make identical changes to section 1, as applied to municipalities.

Section 4 amends s. 252.35(2), F.S., to require the Division of Emergency Management to post a model of a local government contract for debris removal to their website no later than June 1, 2023, and to post an updated model no later than June 1 of each subsequent year.

This section also requires the Division of Emergency Management to prioritize technical assistance and training to fiscally constrained counties[20] as defined in s. 218.67, F.S., on aspects of safety measures, preparedness, prevention, response, recovery, and mitigation relating to natural disasters and emergencies.

[17] *Id.*
[18] *Id.*
[19] "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. *See* s. 252.34(8), F.S.
[20] Each county that is entirely within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than $5 million in revenue, based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1, shall be considered a fiscally constrained county. There are currently 29 fiscally constrained counties.

This section is effective upon becoming law.

Section 6 creates s. 252.391, F.S., to encourage local governmental entities to create emergency financial plans for major natural disasters, including, among other things, a calculation of the costs for the event and the financial resources available to recover from the event. The plan should also identify alternative funding strategies in the event that the local governmental entity would be unable to financially address the natural disaster.

Present Situation:

Registered Contractors

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation (DBPR).[21] The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.[22] The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[23]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[24]

“Certified specialty contractors” are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[25]

“Registered contractors” are individuals who have taken and passed a local competency examination and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[26]

Effect of Proposed Changes:

Section 11 amends s. 489.117, F.S., to allow registered contractors to engage in contracting for the types of work covered by their registration within any area for which a state of emergency has been declared for a natural emergency. This authorization will end 24 months after the expiration of the declared state of emergency. The local jurisdiction that licenses the registered contractor may discipline the contractor for violations occurring outside the licensing jurisdiction under these circumstances.

[21] *See* ss. 489.105, 489.107, and 489.113, F.S.
[22] Section 489.107(1), F.S.
[23] Section 489.107, F.S.
[24] *See* ss. 489.105(6)-(8) and (11), F.S.
[25] *See* ss. 489.108, 489.113, 489.117, and 489.131, F.S.
[26] Section 489.117, F.S.

This section is effective upon becoming a law.

Present Situation:

Building Permits and Inspections

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[27]

Every local government must enforce the Florida Building Code and issue building permits.[28] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit.[29] A local government may charge reasonable fees as set forth in a schedule of fees adopted by the enforcing agency for the issuance of a building permit.[30] Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Building Code.[31] Enforcing the Building Code includes the direct costs and reasonable indirect costs associated with training, review of building plans, building inspections, reinspections, building permit processing, and fire inspections.[32] Local governments must post all building permit and inspection fee schedules on its website.[33]

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections.[34] Construction work may not be done beyond a certain point until it passes an inspection.

Current law provides a set of deadlines for ordinary processing of a building permit, chief among them that a local government must approve, approve with conditions, or deny an application for a building permit within 120 days following receipt of a completed application.[35] Various laws require or encourage local governments to further expedite the permitting process in certain situations, such as for the construction of public schools, state colleges and universities[36] and affordable housing.[37]

[27] Section 553.72, F.S.
[28] Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[29] Sections 125.56(4)(a), 553.79(1), F.S.
[30] Section 553.80 F.S.
[31] *Id.*
[32] Section 553.80 (7)(a)(1)
[33] Section 125.56 (4)(c) F.S., Section 166.222(2) F.S.
[34] Section 110 Seventh edition of the Florida Building Code (Building).
[35] Section 553.792(1)(a), F.S.
[36] Section 553.80(6)(b)2., F.S.
[37] *See* sections 403.973(3), 420.5087(6)(c)8., and 553.80(6)(b)1., F.S.

In addition to the inspections required by the Building Code, a building official may require other inspections of any construction work to ascertain compliance with the provisions of the Building Code and other laws that are enforced by the government entity.[38]

Effect of Proposed Changes:

Section 7 amends s. 252.40, F.S., to encourage municipalities and counties to create inspection teams to review and approve expedited permits for temporary housing solutions, repairs, and renovations following a natural disaster, and establish interlocal agreements with other jurisdictions to provide additional building inspection services during a state of emergency.

The bill additionally encourages local governments to develop and adopt plans to provide accommodations for contractors, utility workers, first responders, and others dispatched to aid in hurricane recovery efforts. The bill provides that public areas such as fairgrounds and parking lots may be used for tents and trailers for temporary accommodations.

Section 12 creates s. 553.7922, F.S., to require local governments to approve special processing procedures to expedite the issuance of permits following a natural emergency for which the Governor has declared a state of emergency. Permits to be expedited pursuant to this section are those which do not require technical review, including, but not limited to permits for: roof repairs; reroofing; electrical repairs; service changes; or the replacement of one window or door. Local governments are also permitted to waive application and inspection fees for permits expedited under this section.

Section 13 amends s. 553.80, F.S., to, as of January 1, 2023, prohibit local governments located in areas designated in the FEMA disaster declarations for Hurricanes Ian and Nicole[39] from raising building inspection fees until October 1, 2024.

This section expires on June 30, 2025, and is effective upon becoming law.

Present Situation:

Tolling of Permits during Emergencies

Under s. 252.363, F.S., when the Governor declares a state of emergency for a natural emergency, the period to exercise rights under a permit or other authorization is tolled for the duration of the emergency. The period remaining to exercise such rights is extended for six months in addition to the tolled period.

The emergency tolling and extension expressly applies to the following permits and authorizations:

- Expiration of a development order issued by a local government;
- Expiration of a building permit;

[38] S. 110.3.10, Seventh Edition of the Florida Building Code (Building).

[39] All 67 counties in Florida were designated within the FEMA disaster declaration for Hurricane Ian and 61 counties for Hurricane Nicole.

- Expiration of an environmental resource permit issued by the Department of Environmental Protection (DEP) or a water management district under ch. 373, part IV, F.S.; or
- Expiration of consumptive use permits issued by DEP or a water management district under Part II of ch. 373, F.S related to land subject to a development agreement in which the permittee and developer are the same or a related entity.
- The buildout date for a development of regional impact or any extension of such date under s. 380.06(7)(c), F.S.
- Expiration of development permits and development agreements authorized by state law, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental entity[40]

To receive the benefit of tolling and extension of a permit, the holder must follow the procedure outlined in s. 252.363(1)(b), F.S. Specifically, within 90 days after the emergency declaration's termination, the permit holder must provide written notice of the intent to exercise the tolling and extension. The written notice must identify the specific permit or authorization qualifying for the extension to the issuing authority. Once the permitholder has satisfied this procedure, the tolling and extension are granted as a matter of law, and no further action on the part of the issuing authority is needed.[41]

The tolling and extension of permits and other authorizations does not apply to the following:
- A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies;
- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers;
- The holder of a permit or other authorization who is determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action; and
- A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would conflict with the extensions granted due to a state of emergency.[42]

Effect of Proposed Changes:

Section 5 amends s. 252.363(1)(a), F.S., to increase the extension of certain building permits following a declaration of a state of emergency from six to 24 months. The extension is capped at 48 months in the event of multiple natural emergencies.

[40] Section 252.363(1)(a), F.S.
[41] "Nothing in the statute imposes an obligation on the municipality to take any action extending development orders, rather, it appears that the Legislature intended to place that burden on the holder of the permit who must provide written notification to the issuing authority of his or her intent to exercise the tolling and extension of the statute." *See* Op. Att'y Gen. Fla. 12-13 (2012), *available at* http://www.myfloridalegal.com/ago.nsf/Opinions/0DF58A091F0DDBEC852579EB00743D48 (last visited Mar. 13, 2023).
[42] Section 252.363(1)(d), F.S.

Present Situation:

Independent Special Fire Control District Performance Reviews

Independent special fire control districts are created by the Legislature to provide fire suppression and related activities within the territorial jurisdiction of the district.[43] The Independent Special Fire Control District Act[44] provides standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards.[45]

Fire control districts may levy ad valorem taxes on real property within the district of no more than 3.75 mills unless a greater amount was previously authorized.[46] A district also may levy non-ad valorem assessments.[47] The district board may adopt a schedule of reasonable fees for services performed.[48] Additionally, the district board may impose an impact fee if so authorized by law and the local general purpose government has not adopted an impact fee for fire services that is distributed to the district for construction.[49]

In 2021,[50] the Legislature mandated a performance review schedule of certain independent special districts, which included fire control districts, to evaluate district programs, activities, and functions.[51] Beginning October 1, 2022, and every five years thereafter, every independent special fire control district must have a performance review conducted.[52] The Office of Program Policy Analysis and Government Accountability must conduct the performance review for special fire control districts that are located in a rural area of opportunity.[53] The final report of the performance review must be filed with the governing board of the district, the Auditor General, the President of the Senate, and the Speaker of the House of Representatives no later than 9 months from the beginning of the district's fiscal year (i.e., July 1st).[54]

Effect of Proposed Changes:

Section 3 amends s. 189.0695, F.S., to allow independent special fire control districts to submit performance reviews 15 months after the beginning of the district's fiscal year in the event of a natural disaster, or 24 months after the beginning of the fiscal year in the event of a hurricane rated category 3 or higher. This section applies retroactively to the reviews required to have been conducted by October 1, 2022, and the final report otherwise due by July 1, 2023.

[43] Section 191.003(5), F.S.
[44] Chapter 191, F.S.
[45] Section 191.002, F.S.
[46] Sections 191.009(1), F.S. *see* art. VII, s. 9, Fla. Const. (special districts may not levy an ad valorem tax in excess of the millage "authorized by law approved by vote of the electors.")
[47] Section 191.009(2), F.S.
[48] Section 191.009(3), F.S.
[49] Section 191.009(4), F.S.
[50] Chapter 2021-226 Laws of Fla.
[51] Section 189.0695,F.S.
[52] Section 189.0695(2)(d), F.S.
[53] Section 189.0695 (2)(b), F.S.
[54] Section 189.0695(2)(c), F.S. The fiscal years of each independent special fire control district begins October1 of a calendar year.

Present Situation:

Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act,[55] which requires federal agencies to use a qualifications-based selection process for architectural, engineering, and associated services, such as mapping and surveying. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price. In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),[56] which is modeled after the Brooks Act. The CCNA requires state and local government agencies to procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process.[57]

CCNA Procurement Process

The CCNA establishes a three-phase process for procuring professional services:
- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive selection.
- Phase 3 – Competitive negotiation.

During Phase 1, the public announcement and qualification phase, state and local agencies must publicly announce each occasion when professional services will be purchased for one of the following:
- A project, when the basic construction cost is estimated by the agency to exceed $325,000; or
- A planning or study activity, when the fee for professional services exceeds $35,000.[58]

During Phase 2, the competitive selection phase, an agency must evaluate the qualifications and past performance of interested consultants and select at least three consultants, ranked in order of preference, that it considers the most highly qualified to perform the required services. During this phase, the CCNA prohibits the agency from requesting, accepting, or considering proposals for the compensation to be paid.

During Phase 3, the competitive negotiation phase, an agency must first negotiate compensation with the highest ranked consultant. If the agency is unable to negotiate a satisfactory contract with that consultant at a price the agency determines to be fair, competitive, and reasonable, negotiations with the consultant must be formally terminated. The agency must then negotiate with the remaining ranked consultants, in order of rank, and follow the same process until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with any of the ranked consultants, the agency must select additional consultants, ranked in the order of

[55] Public Law 92-582, 86 Stat. 1278 (1972).
[56] Chapter 73-19, Laws of Fla., codified as s. 287.055, F.S.
[57] Section 287.055, F.S.
[58] Section 287.055(3)(a)1., F.S.

competence and qualification without regard to price, and continue negotiations until an agreement is reached.[59]

Continuing Contracts under the CCNA

The CCNA explicitly states it does not prohibit a continuing contract[60] between a firm and an agency.[61] A continuing contract is a contract for professional services entered into in accordance with the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects.[62] The CCNA prohibits firms that are parties to a continuing contract from being required to bid against one another.[63]

Current law authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each project does not exceed $4 million, for study activities if the fee for professional services for each study does not exceed $500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except the contract must include a termination clause.[64]

Effect of Proposed Changes:

Section 8 amends s. 287.055(2)(g), F.S., to temporarily allow continuing contracts under the CCNA for construction projects related to natural disaster response or relief that do not exceed $15 million per project. This provision applies to contracts executed through June 30, 2025, and is effective upon becoming a law.

Section 9 provides for the future expiration and reversion of statutory text in section 8 on July 1, 2026.

Present Situation:

Community Planning

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.[65] Each county and municipality must maintain a comprehensive plan to guide future development.[66]

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.[67] A comprehensive plan is intended to provide for the future use of land, which contemplates a

[59] Section 287.055(5), F.S.
[60] Section 287.055(2)(g), F.S.
[61] Section 287.055(4)(d), F.S.
[62] Section 287.055(2)(g), F.S.
[63] *Id.*
[64] Section 287.055(2)(g), F.S.
[65] Section 163.3167(1), F.S.
[66] Section 163.3167(2), F.S.
[67] Section 163.3194(3), F.S

gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out regulations for a different facet of development.[68]

A comprehensive plan is implemented through the adoption of land development regulations[69] that are consistent with the plan, and which contain specific and detailed provisions necessary to implement the plan.[70] Such regulations must, among other prescriptions, regulate the subdivision of land and the use of land for the land use categories in the land use element of the comprehensive plan.[71] Substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the comprehensive plan.[72]

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment to receive two public hearings, the first held by the local planning board, and subsequently by the governing board.[73]

Development Permits and Orders

The Community Planning Act defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."[74] When a party wishes to engage in development activity, they must seek a development permit from the appropriate local government having jurisdiction. Under the Community Planning Act, a development permit includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land."[75] Once a local government has officially granted or denied a development permit, the official action constitutes a development order.[76] A development order vests certain rights related to the land.[77]

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[68] Section 163.3177(6), F.S. The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.

[69] "Land development regulations" means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, except that this definition does not apply in s. 163.3213. See s. 163.3164(26), F.S.

[70] Section 163.3202, F.S.

[71] *Id.*

[72] Section 163.3213, F.S.

[73] Sections 163.3174(4)(a) and 163.3184, F.S.

[74] Section 163.3164(14), F.S.

[75] *Id.* at (16).

[76] *See id.* at (15).

[77] *See* s. 163.3167(3), F.S.

Effect of Proposed Changes:

Section 14 provides that a county or municipality in an area designated as a disaster declaration for Hurricane Ian or Hurricane Nicole[78] may not adopt more restrictive or burdensome procedures to its comprehensive plan or land development regulations concerning the review, approval or issuance of a site plan, development permit, or development order, or propose any such adoption of amendment before October 1, 2024. This subsection applies retroactively to September 29, 2022. Any comprehensive plan amendment, land development regulation, development permit, or development order approved by a county or municipality under procedures adopted before the effective date of this act may be enforced.

Present Situation:

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent.[79] It is unlawful to store, leave, or abandon any derelict vessel in this state.[80]

Abandoned Vessels

"Abandoned property"[81] means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in state law.

When a derelict vessel or a vessel declared to be a public nuisance is on the waters of the state, a law enforcement officer must place a notice of removal on the vessel. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner.[82]

If, after 21 days of posting and mailing the notice, the owner has not removed the vessel from the waters of the state or shown reasonable cause for failure to do so, the law enforcement agency may remove, destroy, or dispose of the vessel.[83] A person may not be charged with a violation by law enforcement within 45 days after a hurricane has passed over the state.[84]

[78] All 67 counties in Florida were designated within the federal disaster declaration for Hurricane Ian, and 61 counties for Hurricane Nicole.
[79] Section 823.11(1)(b), F.S.
[80] Section 376.15, F.S.; s. 823.11(2), F.S.
[81] Section 705.101(3), F.S.
[82] Section 705.103(2), F.S.
[83] *Id*.
[84] Section 823.11 (2)(b)2.b, F.S.

The owner of a derelict vessel or a vessel declared to be a public nuisance who does not remove the vessel after receiving notice, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal.[85] Upon the final disposition of the vessel, the law enforcement officer must notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.[86]

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow a local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.[87]

Removal of Derelict Vessels

The FWC's Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.[88] Sections 376.15 and 823.11, F.S., both address the treatment of derelict vessels. Much of the language between the two statutes is duplicative.[89]

Both state and local law enforcement are authorized and empowered to relocate, remove, store, destroy, or dispose of a derelict vessel from waters of the state if the derelict vessel threatens navigation or is a danger to the environment, property, or persons.[90] The FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at the FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.[91]

The costs incurred by the FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.[92] A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.[93]

The FWC has the authority to provide grants, funded from the Marine Resource Conservation Trust Fund or the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of this state, if funds are appropriated for the grant program.[94] However, each fiscal year, if all program funds are not requested by and granted to local

[85] Section 705.103(4), F.S.
[86] *Id*.
[87] Section 327.60(5), F.S.
[88] Section 327.70, F.S.
[89] Section 376.15, F.S.; s. 823.11, F.S.
[90] Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.
[91] Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.
[92] Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.
[93] Section 705.103(4), F.S.
[94] Section 376.15, F.S.

governments for the removal of derelict vessels by the end of the third quarter, the FWC may use the remainder of the funds to remove, or pay private contractors to remove, derelict vessels.[95] Pursuant to this, the FWC established the Derelict Vessel Removal Grant Program in 2019.[96] Grants are awarded based on a set of criteria outlined in FWC rules.[97]

Effect of Proposed Changes:

Section 15 amends s. 823.11(2), F.S., to provide clarification regarding the 45 day grace period following a hurricane owners have to bring a derelict vessel into compliance before they will be charged with a violation and the vessel will be removed.

Present Situation:

Local Government Emergency Response Bridge Loan

Early in 2023, the Legislature created s. 288.066, F.S., to establish the Local Government Emergency Response Bridge Loan within the Department of Economic Opportunity (DEO)[98] to provide financial assistance to local governments impacted by Hurricane Ian or Hurricane Nicole. The purpose of the loan program is to assist these local governments in maintaining operations by bridging the gap between the time that the declared disaster occurred and the time that additional funding sources or revenues are secured to provide them with financial assistance.[99]

The loans may be issued during the 2022-2023 fiscal year or the 2023-2024 fiscal year, subject to appropriation.[100] The loans are interest-free with the loan amount determined based upon demonstrated need.[101] The loans must be paid back within one year, unless extended by up to six months by the DEO based on the local government's financial condition.[102]

To be eligible a local government must be a county or municipality located in an area designated in the Federal Emergency Management Agency disaster declarations for Hurricane Ian or Hurricane Nicole.[103] Also, the local government must show that it may suffer or has suffered substantial loss of its tax or other revenues as a result of the hurricane and demonstrate a need for financial assistance to enable it to continue to perform its governmental operations.[104]

[95] Section 376.15, F.S.
[96] FWC, *FWC Derelict Vessel Removal Grant Program Guidelines*, 2 (2019), *available at* https://myfwc.com/media/22317/dv-grant-guidelines.pdf (last visited March 11, 2023). Incorporated by reference in Fla. Admin. Code R. 68-1.003.
[97] *Id.*
[98] Section 288.066 F.S.
[99] Section 288.066 (1), F.S.
[100] Section 288.066 (6)(a), F.S.
[101] Section 288.066 (3), F.S.
[102] Section 288.066 (3)(c), F.S.
[103] Section 288.066 (2), F.S.
[104] *Id.*

A local government may only use loan funds to continue local governmental operations or to expand and modify such operations to meet disaster-related needs.[105] The funds may not be used to finance or supplant funding for capital improvements or to repair or restore damaged public facilities or infrastructure. The DEO must coordinate with the Division of Emergency Management to assess whether such loans would affect reimbursement under federal programs for disaster-related expenses.[106]

This program expires June 30, 2027. As loans are repaid, the DEO will remit the payments back to the General Revenue Fund and upon expiration, the DEO must return all unencumbered funds and loan payments back to the General Revenue Fund.[107]

Effect of Proposed Changes:

Section 10 amends s. 288.066, F.S., requiring the Local Government Emergency Bridge Loan Program to become a revolving program and make funds available for local governments impacted by federally declared disasters until July 1, 2038. The program is renamed the Local Government Emergency Revolving Bridge Loan Program.

Upon the issuance of a federal disaster declaration, the DEO shall provide notice of application requirements and the total amount of funds available and make loan information available to eligible local governments. The eligible local government must submit a loan application within 12 months from the date that a federal disaster was declared. The section further creates an application process and sets forth the conditions that must be met by a local government in order to receive funds under the program. Reasons for a loan application denial may include, but are not limited to, the loan risk, an incomplete application, failure to demonstrate need, or the fact that receiving a loan may negatively affect the local government's eligibility for other federal programs. Lastly, this section sets forth the obligations of the DEO to administer the program and manage repayments.

Section 16 appropriates $50 million in nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund of the DEO for the bridge loan program. This section also directs any funds that have not been loaned to a local government pursuant to a loan agreement as of July 1, 2023, to be transferred to the Economic Development Trust Fund to be used for the Local Government Emergency Revolving Bridge Loan Program established by the bill. Lastly, all loans made pursuant to the existing Local Government Emergency Bridge Loan Program must be repaid into the Economic Development Trust Fund and be made available for loans under the revolving loan program provided in the bill.

Effective Date

Section 17 provides that the bill will take effect on July 1, 2023, unless otherwise expressly provided.

[105] *Id.*
[106] Section 288.066 (6)(b), F.S.
[107] Section 288.066(8), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive, yet indeterminate fiscal impact on private sector businesses that provide professional services under the CCNA, by allowing those entities to enter into larger contracts for specified disaster relief projects under a continuing contract.

Registered contractors who are able to work outside of their jurisdiction during a state of emergency may see increased positive fiscal impact due to increased business.

C. Government Sector Impact:

The bill will likely have an insignificant negative fiscal impact on local governments, as many of the bill provisions are permissive rather than mandatory. Provisions that limit a local government's ability to raise building fees for a defined period of time or that require local governments to expedite building permits during emergencies may have a negative, but likely insignificant, fiscal impact.

By allowing state and local governments to enter into larger contracts for specified disaster relief construction projects under a continuing contract, the state or a local government may save on contractual and workload expenditures associated with the procurement of such projects.

The bill appropriates $50 million in nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund of the DEO for the Local Government Emergency Revolving Bridge Loan Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

125.023, 166.0335, 189.0695, 252.35, 252.363, 252.391, 252.40, 287.055, 288.066, 489.117, 553.7922, 553.80, 823.11 2023-1
This bill substantially amends the following sections of the Florida Statutes: 125.023, 166.0335, 189.0695, 252.35, 252.363, 252.391, 252.40, 287.055, 288.066, 489.117, 553.7922, 553.80, and 823.11.

The bill creates undesignated sections of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 15, 2023:
The committee substitute makes clarifying changes as it relates to temporary residential structures, tolling and extension of permits, expedited approval of certain permits, registered contractors, and the prohibition on adopting procedures to comprehensive plans and land development regulations.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Fiscal Policy (Martin) recommended the following:

Senate Amendment (with title amendment)

Delete lines 156 - 447
and insert:
Section 4. Effective upon becoming a law, paragraphs (bb), (cc), and (dd) are added to subsection (2) of section 252.35, Florida Statutes, to read:
252.35 Emergency management powers; Division of Emergency Management.—
(2) The division is responsible for carrying out the

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provisions of ss. 252.31-252.90. In performing its duties, the division shall:

(bb) Post on its website a model of a local government contract for debris removal to be used by political subdivisions. The initial model contract must be posted to the website no later than June 1, 2023, and, thereafter, the model contract must be annually updated and posted to the website no later than June 1.

(cc) Prioritize technical assistance and training to fiscally constrained counties as defined in s. 218.67 on aspects of safety measures, preparedness, prevention, response, recovery, and mitigation relating to natural disasters and emergencies.

(dd) Administer a revolving loan program for local government hazard mitigation projects.

Section 5. Paragraph (a) of subsection (1) of section 252.363, Florida Statutes, is amended to read:

252.363 Tolling and extension of permits and other authorizations.—

(1)(a) The declaration of a state of emergency issued by the Governor for a natural emergency tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 24 ~~6~~ months in addition to the tolled period. The extended period to exercise the rights under a permit or other authorization may not exceed 48 months in total in the event of multiple natural emergencies for which the Governor declares a state of

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emergency. This paragraph applies to the following:

1. The expiration of a development order issued by a local government.

2. The expiration of a building permit.

3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373.

4. Permits issued by the Department of Environmental Protection or a water management district pursuant to part II of chapter 373 for land subject to a development agreement under ss. 163.3220-163.3243 in which the permittee and the developer are the same or a related entity.

5. The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c).

6. The expiration of a development permit or development agreement authorized by Florida Statutes, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental agency.

Section 6. Section 252.391, Florida Statutes, is created to read:

252.391 Emergency financial plans.—

(1) As used in this section, the term "local governmental entity" means a county, municipality, or district school board.

(2) Each local governmental entity is encouraged to develop an emergency financial plan for major natural disasters that may impact its jurisdiction. Disasters include, but are not limited to, hurricanes, tornadoes, floods, and wildfires.

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(3) Each emergency financial plan should be based on the likely frequency of the disaster's occurrence. The financial plan should include a calculation of the costs for the natural disaster event and a determination of the financial resources available to the local governmental entity. If insufficient funds are available to address the disaster event, the emergency financial plan should identify strategies to close the gap between the disaster event costs and the local governmental entity's financial capacity. Such strategies may include rainy day funds, reprioritizing its annual budget, and borrowing.

(4) Local governmental entities should annually review their emergency financial plans to address changes in conditions.

Section 7. Subsections (3) and (4) are added to section 252.40, Florida Statutes, to read:

252.40 Mutual aid arrangements.—

(3) Local governments may create inspection teams to review and approve expedited permits for temporary housing solutions, repairs, and renovations after a natural disaster. Local governments are encouraged to establish interlocal agreements with other jurisdictions to provide additional inspection services during a state of emergency.

(4) Municipalities and counties are encouraged to develop and adopt plans to provide temporary accommodations for contractors, utility workers, first responders, and others dispatched to aid in hurricane recovery efforts. Public areas, including, but not limited to, fairgrounds and parking lots, may be used for tents and trailers for such temporary accommodations.

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Section 8. Effective upon becoming a law, paragraph (g) of subsection (2) of section 287.055, Florida Statutes, is amended to read:

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

(2) DEFINITIONS.—For purposes of this section:

(g) A "continuing contract" is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed $4 million, for study activity if the fee for professional services for each individual study under the contract does not exceed $500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another. The term "continuing contract" includes contracts executed through December 31, 2023, for professional services to the agency for projects related to repairs and remediation to a specific site due to damage caused by Hurricane Ian in which the estimated construction cost for each individual project does not exceed $15 million.

Section 9. The amendments made by this act to s. 287.055(2)(g), Florida Statutes, expire on July 1, 2026, and the


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text of that paragraph shall revert to that in existence on the day before the date that this act became a law, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of the text which expire pursuant to this section.

Section 10. Section 288.066, Florida Statutes, as created by section 1 of chapter 2023-1, Laws of Florida, is amended to read:

288.066 Local Government Emergency Revolving Bridge Loan Program.—

(1) CREATION.—The Local Government Emergency Revolving Bridge Loan Program is created~~, subject to appropriation,~~ within the department to provide financial assistance to local governments impacted by federally declared disasters ~~Hurricane Ian or Hurricane Nicole~~. The purpose of the loan program is to assist these local governments in maintaining government operations by bridging the gap between the time that the declared disaster occurred and the time that additional funding sources or revenues are secured to provide them with financial assistance.

(2) ELIGIBILITY.—To be eligible for a loan under the program, a local government must be a county or a municipality located in an area designated in a ~~the~~ Federal Emergency Management Agency disaster declaration ~~declarations for Hurricane Ian or Hurricane Nicole~~. The local government must show that it may suffer or has suffered substantial loss of its tax or other revenues as a result of the disaster ~~hurricane~~ and demonstrate a need for financial assistance to enable it to

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continue to perform its governmental operations. Access to and eligibility for the loan program supersedes any local government charter or borrowing limitations that would otherwise financially constrain the local government's ability to recover from a disaster.

(3) LOAN TERMS.—

(a) The department may provide interest-free loans to eligible local governments through a promissory note or other form of written agreement evidencing an obligation to repay the borrowed funds to the department.

(b) The amount of each loan must be based upon demonstrated need ~~and must be disbursed to the local government in a lump sum~~.

(c) The term of the loan is up to 1 year~~, unless otherwise extended by the department~~. However, the department may extend loan terms for up to 6 months based on the local government's financial condition.

(4) APPLICATION.—The department shall prescribe a loan application and any other information determined necessary by the department to review and evaluate the application. The eligible local government must submit a loan application within the 12 months after the date that the federal disaster was declared. Upon receipt of an application, the department shall review the application and may request additional information as necessary to complete the review and evaluation. The department shall determine the amount to be loaned, which may be a lower amount than requested, based on the information provided and the total amount of funds available to be loaned and in relation to demonstrated need from other eligible applicants. The department


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may deny a loan application. Reasons for a loan application denial may include, but are not limited to, the loan risk, an incomplete application, failure to demonstrate need, or the fact that receiving a loan may negatively affect the local government's eligibility for other federal programs.

(5) ~~(4)~~ USE OF LOAN FUNDS.—A local government may use loan funds only to continue local governmental operations or to expand or modify such operations to meet disaster-related needs. The funds may not be used to finance or supplant funding for capital improvements or to repair or restore damaged public facilities or infrastructure.

(6) ~~(5)~~ LOAN REPAYMENT.—

(a) The local government may make payments against the loan at any time without penalty. Early repayment is encouraged as other funding sources or revenues become available to the local government.

(b) Loans become due and payable in accordance with the terms of the agreement.

(7) ~~(6)~~ ADMINISTRATION.—

(a) Upon the issuance of a federal disaster declaration, the department shall provide notice of application requirements and the total amount of funds available and make loan information available to eligible local governments. Based upon the amount of funds in the Economic Development Trust Fund available to be loaned and anticipated balances, the department may make funds available in an amount reasonably related to the anticipated need, based upon the impacts of the federal disaster, up to the total amount available ~~The department may approve loans in the 2022-2023 fiscal year or the 2023-2024~~

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~~fiscal year up to the total amount appropriated~~.

(b) The department must coordinate with the Division of Emergency Management or other applicable state agencies to assess whether such loans would affect reimbursement under federal programs for disaster-related expenses.

(c) All repayments of principal and interest shall be returned to the loan fund and made available as provided in this section. Notwithstanding s. 216.301, funds appropriated for this program are not subject to reversion ~~Upon receipt of any loan payment from a local government, the department shall transfer the funds to the General Revenue Fund~~.

(8)~~(7)~~ RULES.—The department may adopt rules to implement this section.

(9)~~(8)~~ EXPIRATION.—This section expires July 1, 2038 ~~June 30, 2027~~. A loan may not be awarded after June 30, 2038. Upon expiration, all unencumbered funds and loan repayments made on or after July 1, 2038, shall be transferred ~~revert~~ to the General Revenue Fund.

Section 11. Effective upon becoming a law, subsection (5) is added to section 489.117, Florida Statutes, to read:

489.117 Registration; specialty contractors.—

(5) Notwithstanding paragraph (1)(b), a registered contractor may engage in contracting only for work covered by the registration within an area for which a state of emergency is declared pursuant to s. 252.36 for a natural emergency. This authorization terminates 24 months after the expiration of the declared state of emergency. The local jurisdiction that licenses the registered contractor may discipline the registered contractor for violations occurring outside the licensing

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jurisdiction which occur during the period such work is authorized under this subsection.

Section 12. Section 553.7922, Florida Statutes, is created to read:

553.7922 Local government-expedited approval of certain permits.—Following a state of emergency declared pursuant to 252.36 for a natural emergency, local governments impacted by the emergency shall approve special processing procedures to expedite permit issuance for permits that do not require technical review, including, but not limited to, roof repairs, reroofing, electrical repairs, service changes, or the replacement of one window or one door. Local governments may waive application and inspection fees for permits expedited under this section.

Section 13. Effective upon becoming a law, present subsections (8) and (9) of section 553.80, Florida Statutes, are redesignated as subsections (9) and (10), respectively, and a new subsection (8) is added to that section, to read:

553.80 Enforcement.—

(8) Effective January 1, 2023, local governments located in areas designated in the Federal Emergency Management Agency disaster declarations for Hurricane Ian or Hurricane Nicole may not raise building inspection fees, as authorized by s. 125.56(2) or s. 166.222 and this section, before October 1, 2024. This subsection expires June 30, 2025.

Section 14. A county or municipality located in an area designated in a Federal Emergency Management Agency disaster declaration for Hurricane Ian or Hurricane Nicole shall not propose or adopt more restrictive or burdensome procedures to

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its comprehensive plan or land development regulations, concerning review, approval, or issuance of a site plan, development permit or development order, to the extent those terms are defined by s. 163.3164, Florida Statutes, before October 1, 2024. This subsection applies retroactively to September 29, 2022.

(2) Any comprehensive plan amendment, land development regulation, site plan, development permit, or development order approved by a county or municipality under procedures adopted before the effective date of this act may be enforced.

(3) This section shall take effect upon becoming a law and expires June 30, 2025.

Section 15. Section 627.4108, Florida Statutes, is created to read:

627.4108 Submission of claims handling manuals; attestation.—

(1) This section is intended to ensure that property insurers are able to properly handle insurance claims during natural disasters, catastrophes, and other emergencies.

(2) Each authorized property insurer and eligible surplus lines property insurer conducting business in this state must submit any and all claims handling manuals to the office:

(a) On or before August 1, 2023;

(b) Annually thereafter, on or before May 1 of each calendar year; and

(c) Within 30 days of any updates or amendments to such manual.

(2) The insurer must include with each such submission an attestation on a form prescribed by the office stating that:

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(a) The insurer's claims handling manual complies with the requirements of this code and comports to usual and customary industry claims handling practices; and

(b) The insurer maintains adequate resources available to implement the requirements of its claims handling manual at all times, including during extreme catastrophic events.

(3) The office may, as often as it deems necessary, conduct market conduct examinations under s. 624.3161 of insurers to ensure compliance with this section.

Section 16. Paragraph (d) is added to subsection (2) of section 823.11, Florida Statutes, to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(2)

(d) Notwithstanding the additional 45 days provided in sub-subparagraph (b)2.b. during which an owner or a responsible party may not be charged for a violation of this section, the commission, an officer of the commission, a law enforcement agency or officer specified in s. 327.70, or, during a state of emergency declared by the Governor, the Division of Emergency Management or its designee, may immediately begin the process set forth in s. 705.103(2)(a) and, once that process has been completed and the 45 days provided herein have passed, any vessel that has not been removed or repaired such that it is no longer derelict upon the waters of this state may be removed and destroyed as provided therein.

Section 17. For the 2023-2024 fiscal year, the sums of $1,000,000 in nonrecurring funds from the General Revenue Fund and $10,000,000 in nonrecurring funds from the Federal Grants Trust Fund are appropriated to the Division of Emergency

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Management to fund the Safeguarding Tomorrow Through Ongoing Risk Mitigation Act Revolving Loan Program. These funds shall be placed in reserve. The division is authorized to submit a budget amendment for release of the funds held in reserve for approval by the Legislative Budget Commission pursuant to chapter 216, Florida Statutes. Release is contingent upon documentation of an award or other approval by the Federal Emergency Management Agency and the division's approved intended use plan for the funds.

Section 18. The sum of $971,331 in recurring funds and $37,456 in nonrecurring funds from the Insurance Regulatory Trust Fund and eight positions with associated salary rate of 625,000 is appropriated to the Office of Insurance Regulation related to hurricane related market conduct activity.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 19 - 80

and insert:

counties; requiring the division administer a revolving loan fund for certain local government projects; amending s. 252.363, F.S.; increasing the timeframe to exercise rights under a permit or other authorization; limiting the timeframe to exercise rights under a permit or other authorization to a certain timeframe when multiple natural emergencies occur; creating s. 252.391, F.S.; defining the term "local governmental entity"; encouraging local governmental entities to develop an emergency

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financial plan for major disasters; providing the contents of the emergency financial plan; recommending annual review of the emergency financial plan; amending s. 252.40, F.S.; authorizing local governments to create inspection teams for the review and approval of certain expedited permits; encouraging local governments to establish certain interlocal agreements; encouraging local governments to develop plans related to temporary accommodations of certain individuals; amending s. 287.055, F.S.; revising the definition of the term "continuing contract"; providing for the future expiration and reversion of specified statutory text; amending s. 288.066, F.S.; creating the Local Government Emergency Revolving Bridge Loan Program within the Department of Economic Opportunity to provide certain financial assistance to local governments impacted by federally declared disasters; conforming provisions to changes made by the act; providing construction; authorizing the department to provide interest-free loans to eligible local governments through specified means; requiring the department to prescribe a loan application; requiring the department to determine the loan amount based on certain factors; authorizing the department to deny a loan application and providing specified reasons for such denial; requiring the department to provide certain notice and make loan information available to eligible local governments; requiring loan repayments to be returned to the loan fund;

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providing that funds appropriated for the program are not subject to reversion; providing for expiration; amending s. 489.117, F.S.; authorizing a registered contractor to engage in contracting under certain circumstances; providing an expiration timeframe for such authorization; authorizing the local jurisdiction to discipline the registered contractor under certain circumstances; creating s. 553.7922, F.S.; requiring local governments impacted by certain emergencies to approve special processing procedures to expedite certain permits; amending s. 553.80, F.S.; prohibiting certain local governments from raising building inspection fees during a certain timeframe; providing for future expiration; prohibiting counties and municipalities located in areas included in certain federal disaster declarations from adopting or amending certain procedures for a specified period; providing for retroactive application; providing that certain comprehensive plan amendments, land development regulations, site plans, and development permits or orders may be enforced; providing for expiration; creating s. 627.4108, F.S.; requiring certain property insurers to submit any and all claims handling manuals to the Office of Insurance Regulation by a certain date and annually thereafter and within a certain timeframe of any updates to such manual; requiring the insurer to include a certain attestation on a form prescribed by the office; requiring the office to conduct market conduct exams as necessary;

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amending s. 823.11, F.S.; authorizing certain persons to engage in a process relating to the removal and destruction of derelict vessels; providing appropriations; providing for the transfer of

By the Committee on Community Affairs; and Senator Martin

578-02610-23 2023250c1

A bill to be entitled

An act relating to natural emergencies; creating ss. 125.023 and 166.0335, F.S.; defining the term "temporary shelter"; prohibiting counties and municipalities, respectively, from prohibiting temporary shelters on residential property for a specified timeframe under certain circumstances; amending s. 189.0695, F.S.; authorizing independent special fire control districts to file a specified report on an alternative schedule under certain circumstances; providing for retroactive application; amending s. 252.35, F.S.; requiring the Division of Emergency Management to post a model contract for debris removal on its website by a specified date; requiring the model contract to be annually updated by a specified date; requiring the division to prioritize technical assistance and training relating to natural disasters and emergencies to fiscally constrained counties; amending s. 252.363, F.S.; increasing the timeframe to exercise rights under a permit or other authorization; limiting the timeframe to exercise rights under a permit or other authorization to a certain timeframe when multiple natural emergencies occur; creating s. 252.391, F.S.; defining the term "local governmental entity"; encouraging local governmental entities to develop an emergency financial plan for major disasters; providing the contents of the emergency financial plan; recommending annual review of the emergency financial plan;

Florida Senate - 2023 CS for SB 250

578-02610-23 2023250c1

amending s. 252.40, F.S.; authorizing local governments to create inspection teams for the review and approval of certain expedited permits; encouraging local governments to establish certain interlocal agreements; encouraging local governments to develop plans related to temporary accommodations of certain individuals; amending s. 287.055, F.S.; revising the definition of the term "continuing contract"; providing for the future expiration and reversion of specified statutory text; amending s. 288.066, F.S.; creating the Local Government Emergency Revolving Bridge Loan Program within the Department of Economic Opportunity to provide certain financial assistance to local governments impacted by federally declared disasters; conforming provisions to changes made by the act; providing construction; authorizing the department to provide interest-free loans to eligible local governments through specified means; requiring the department to prescribe a loan application; requiring the department to determine the loan amount based on certain factors; authorizing the department to deny a loan application and providing specified reasons for such denial; requiring the department to provide certain notice and make loan information available to eligible local governments; requiring loan repayments to be returned to the loan fund; providing that funds appropriated for the program are not subject to reversion; providing for expiration; amending s. 489.117, F.S.; authorizing a registered

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

contractor to engage in contracting under certain circumstances; providing an expiration timeframe for such authorization; authorizing the local jurisdiction to discipline the registered contractor under certain circumstances; creating s. 553.7922, F.S.; requiring local governments impacted by certain emergencies to approve special processing procedures to expedite certain permits; amending s. 553.80, F.S.; prohibiting certain local governments from raising building inspection fees during a certain timeframe; providing for future expiration; prohibiting counties and municipalities located in areas included in certain federal disaster declarations from adopting or amending certain procedures for a specified period; providing for retroactive application; providing that certain comprehensive plan amendments, land development regulations, site plans, and development permits or orders may be enforced; providing for expiration; amending s. 823.11, F.S.; authorizing certain persons to engage in a process relating to the removal and destruction of derelict vessels; providing an appropriation; providing for the transfer of certain appropriated funds to the Economic Development Trust Fund of the Department of Economic Opportunity; requiring that loan repayments be repaid to the Economic Development Trust Fund; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 125.023, Florida Statutes, is created to read:

125.023 Temporary shelter prohibition.—

(1) For the purposes of this section, the term "temporary shelter" includes, but is not limited to, a recreational vehicle, trailer, or similar structure placed on a residential property.

(2) Notwithstanding any other law, ordinance, or regulation to the contrary, following the declaration of a state of emergency issued by the Governor for a natural emergency as defined in s. 252.34(8) during which a permanent residential structure was damaged and rendered uninhabitable, a county may not prohibit the placement of one temporary shelter on the residential property for up to 36 months after the date of the declaration or until a certificate of occupancy is issued on the permanent residential structure on the property, whichever occurs first, if all of the following circumstances apply:

(a) The resident makes a good faith effort to rebuild or renovate the damaged permanent residential structure, including, but not limited to, applying for a building permit, submitting a plan or design to the county, or obtaining a construction loan.

(b) The temporary shelter is connected to water and electric utilities and does not present a threat to health and human safety.

(c) The resident lives in the temporary structure.

Section 2. Section 166.0335, Florida Statutes, is created to read:

166.0335 Temporary shelter prohibition.—

(1) For the purposes of this section, the term "temporary shelter" includes, but is not limited to, a recreational vehicle, trailer, or similar structure placed on a residential property.

(2) Notwithstanding any other law, ordinance, or regulation to the contrary, following the declaration of a state of emergency issued by the Governor for a natural emergency as defined in s. 252.34(8) during which a permanent residential structure was damaged and rendered uninhabitable, a municipality may not prohibit the placement of one temporary shelter on the residential property for up to 36 months after the date of the declaration or until a certificate of occupancy is issued on the permanent residential structure on the property, whichever occurs first, if all of the following circumstances apply:

(a) The resident makes a good faith effort to rebuild or renovate the damaged permanent residential structure, including, but not limited to, applying for a building permit, submitting a plan or design to the municipality, or obtaining a construction loan.

(b) The temporary shelter is connected to water and electric utilities and does not present a threat to health and human safety.

(c) The resident lives in the temporary structure.

Section 3. Subsection (4) is added to section 189.0695, Florida Statutes, to read:

189.0695 Independent special districts; performance reviews.—

(4) Notwithstanding the timeframe specified in paragraph (2)(c), an independent special fire control district may file

its final report of the performance review no later than 15 months from the beginning of the district's fiscal year if the special district is within an area for which a state of emergency for a natural disaster was declared pursuant to s. 252.36 or no later than 24 months from the beginning of the district's fiscal year if the special district is within an area for which a state of emergency was declared pursuant to s. 252.36 for a hurricane rated category 3 or higher. This subsection applies retroactively to the final reports required to have been conducted by October 1, 2022.

Section 4. Effective upon becoming a law, paragraphs (bb) and (cc) are added to subsection (2) of section 252.35, Florida Statutes, to read:

252.35 Emergency management powers; Division of Emergency Management.—

(2) The division is responsible for carrying out the provisions of ss. 252.31-252.90. In performing its duties, the division shall:

(bb) Post on its website a model of a local government contract for debris removal to be used by political subdivisions. The initial model contract must be posted to the website no later than June 1, 2023, and, thereafter, the model contract must be annually updated and posted to the website no later than June 1.

(cc) Prioritize technical assistance and training to fiscally constrained counties as defined in s. 218.67 on aspects of safety measures, preparedness, prevention, response, recovery, and mitigation relating to natural disasters and emergencies.

Section 5. Paragraph (a) of subsection (1) of section 252.363, Florida Statutes, is amended to read:

252.363 Tolling and extension of permits and other authorizations.—

(1)(a) The declaration of a state of emergency issued by the Governor for a natural emergency tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 24 ~~6~~ months in addition to the tolled period. The extended period to exercise the rights under a permit or other authorization may not exceed 48 months in total in the event of multiple natural emergencies for which the Governor declares a state of emergency. This paragraph applies to the following:

1. The expiration of a development order issued by a local government.

2. The expiration of a building permit.

3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373.

4. Permits issued by the Department of Environmental Protection or a water management district pursuant to part II of chapter 373 for land subject to a development agreement under ss. 163.3220-163.3243 in which the permittee and the developer are the same or a related entity.

5. The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c).

6. The expiration of a development permit or development agreement authorized by Florida Statutes, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental agency.

Section 6. Section 252.391, Florida Statutes, is created to read:

252.391 Emergency financial plans.—

(1) As used in this section, the term "local governmental entity" means a county, municipality, or district school board.

(2) Each local governmental entity is encouraged to develop an emergency financial plan for major natural disasters that may impact its jurisdiction. Disasters include, but are not limited to, hurricanes, tornadoes, floods, and wildfires.

(3) Each emergency financial plan should be based on the likely frequency of the disaster's occurrence. The financial plan should include a calculation of the costs for the natural disaster event and a determination of the financial resources available to the local governmental entity. If insufficient funds are available to address the disaster event, the emergency financial plan should identify strategies to close the gap between the disaster event costs and the local governmental entity's financial capacity. Such strategies may include rainy day funds, reprioritizing its annual budget, and borrowing.

(4) Local governmental entities should annually review their emergency financial plans to address changes in conditions.

Section 7. Subsections (3) and (4) are added to section 252.40, Florida Statutes, to read:

252.40 Mutual aid arrangements.—

(3) Local governments may create inspection teams to review and approve expedited permits for temporary housing solutions, repairs, and renovations after a natural disaster. Local governments are encouraged to establish interlocal agreements with other jurisdictions to provide additional inspection services during a state of emergency.

(4) Municipalities and counties are encouraged to develop and adopt plans to provide temporary accommodations for contractors, utility workers, first responders, and others dispatched to aid in hurricane recovery efforts. Public areas, including, but not limited to, fairgrounds and parking lots, may be used for tents and trailers for such temporary accommodations.

Section 8. Effective upon becoming a law, paragraph (g) of subsection (2) of section 287.055, Florida Statutes, is amended to read:

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

(2) DEFINITIONS.—For purposes of this section:

(g) A "continuing contract" is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed $4 million, for study activity if the fee for professional services for each individual study under

the contract does not exceed $500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another. The term "continuing contract" includes contracts executed through June 30, 2025, for professional services to the agency for projects related to natural disaster response or relief in which the estimated construction cost for each individual project does not exceed $15 million.

Section 9. The amendments made by this act to s. 287.055(2)(g), Florida Statutes, expire on July 1, 2026, and the text of that paragraph shall revert to that in existence on the day before the date that this act became a law, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of the text which expire pursuant to this section.

Section 10. Section 288.066, Florida Statutes, as created by section 1 of chapter 2023-1, Laws of Florida, is amended to read:

288.066 Local Government Emergency Revolving Bridge Loan Program.—

(1) CREATION.—The Local Government Emergency Revolving Bridge Loan Program is created~~, subject to appropriation,~~ within the department to provide financial assistance to local governments impacted by federally declared disasters ~~Hurricane Ian or Hurricane Nicole~~. The purpose of the loan program is to

assist these local governments in maintaining government operations by bridging the gap between the time that the declared disaster occurred and the time that additional funding sources or revenues are secured to provide them with financial assistance.

(2) ELIGIBILITY.—To be eligible for a loan under the program, a local government must be a county or a municipality located in an area designated in a ~~the~~ Federal Emergency Management Agency disaster declaration ~~declarations for Hurricane Ian or Hurricane Nicole~~. The local government must show that it may suffer or has suffered substantial loss of its tax or other revenues as a result of the disaster ~~hurricane~~ and demonstrate a need for financial assistance to enable it to continue to perform its governmental operations. Access to and eligibility for the loan program supersedes any local government charter or borrowing limitations that would otherwise financially constrain the local government's ability to recover from a disaster.

(3) LOAN TERMS.—

(a) The department may provide interest-free loans to eligible local governments through a promissory note or other form of written agreement evidencing an obligation to repay the borrowed funds to the department.

(b) The amount of each loan must be based upon demonstrated need ~~and must be disbursed to the local government in a lump sum~~.

(c) The term of the loan is up to 1 year~~, unless otherwise extended by the department~~. However, the department may extend loan terms for up to 6 months based on the local government's

financial condition.

(4) APPLICATION.—The department shall prescribe a loan application and any other information determined necessary by the department to review and evaluate the application. The eligible local government must submit a loan application within the 12 months after the date that the federal disaster was declared. Upon receipt of an application, the department shall review the application and may request additional information as necessary to complete the review and evaluation. The department shall determine the amount to be loaned, which may be a lower amount than requested, based on the information provided and the total amount of funds available to be loaned and in relation to demonstrated need from other eligible applicants. The department may deny a loan application. Reasons for a loan application denial may include, but are not limited to, the loan risk, an incomplete application, failure to demonstrate need, or the fact that receiving a loan may negatively affect the local government's eligibility for other federal programs.

(5) ~~(4)~~ USE OF LOAN FUNDS.—A local government may use loan funds only to continue local governmental operations or to expand or modify such operations to meet disaster-related needs. The funds may not be used to finance or supplant funding for capital improvements or to repair or restore damaged public facilities or infrastructure.

(6) ~~(5)~~ LOAN REPAYMENT.—

(a) The local government may make payments against the loan at any time without penalty. Early repayment is encouraged as other funding sources or revenues become available to the local government.

(b) Loans become due and payable in accordance with the terms of the agreement.

(7) ~~(6)~~ ADMINISTRATION.—

(a) Upon the issuance of a federal disaster declaration, the department shall provide notice of application requirements and the total amount of funds available and make loan information available to eligible local governments. Based upon the amount of funds in the Economic Development Trust Fund available to be loaned and anticipated balances, the department may make funds available in an amount reasonably related to the anticipated need, based upon the impacts of the federal disaster, up to the total amount available ~~The department may approve loans in the 2022-2023 fiscal year or the 2023-2024 fiscal year up to the total amount appropriated~~.

(b) The department must coordinate with the Division of Emergency Management or other applicable state agencies to assess whether such loans would affect reimbursement under federal programs for disaster-related expenses.

(c) All repayments of principal and interest shall be returned to the loan fund and made available as provided in this section. Notwithstanding s. 216.301, funds appropriated for this program are not subject to reversion ~~Upon receipt of any loan payment from a local government, the department shall transfer the funds to the General Revenue Fund~~.

(8) ~~(7)~~ RULES.—The department may adopt rules to implement this section.

(9) ~~(8)~~ EXPIRATION.—This section expires July 1, 2038 ~~June 30, 2027~~. A loan may not be awarded after June 30, 2038. Upon expiration, all unencumbered funds and loan repayments made on

or after July 1, 2038, shall be transferred ~~revert~~ to the General Revenue Fund.

Section 11. Effective upon becoming a law, subsection (5) is added to section 489.117, Florida Statutes, to read:

489.117 Registration; specialty contractors.—

(5) Notwithstanding paragraph (1)(b), a registered contractor may engage in contracting only for work covered by the registration within an area for which a state of emergency is declared pursuant to s. 252.36 for a natural emergency. This authorization terminates 24 months after the expiration of the declared state of emergency. The local jurisdiction that licenses the registered contractor may discipline the registered contractor for violations occurring outside the licensing jurisdiction which occur during the period such work is authorized under this subsection.

Section 12. Section 553.7922, Florida Statutes, is created to read:

553.7922 Local government-expedited approval of certain permits.—Following a state of emergency declared pursuant to 252.36 for a natural emergency, local governments impacted by the emergency shall approve special processing procedures to expedite permit issuance for permits that do not require technical review, including, but not limited to, roof repairs, reroofing, electrical repairs, service changes, or the replacement of one window or one door. Local governments may waive application and inspection fees for permits expedited under this section.

Section 13. Effective upon becoming a law, present subsections (8) and (9) of section 553.80, Florida Statutes, are

redesignated as subsections (9) and (10), respectively, and a new subsection (8) is added to that section, to read:

553.80 Enforcement.—

(8) Effective January 1, 2023, local governments located in areas designated in the Federal Emergency Management Agency disaster declarations for Hurricane Ian or Hurricane Nicole may not raise building inspection fees, as authorized by s. 125.56(2) or s. 166.222 and this section, before October 1, 2024. This subsection expires June 30, 2025.

Section 14. A county or municipality located in an area designated in a Federal Emergency Management Agency disaster declaration for Hurricane Ian or Hurricane Nicole shall not adopt more restrictive or burdensome procedures to its comprehensive plan or land development regulations, concerning review, approval, or issuance of a site plan, development permit or development order, to the extent those terms are defined by s. 163.3164, Florida Statutes, or propose any such adoption or amendment before October 1, 2024. This subsection applies retroactively to September 29, 2022.

(2) Any comprehensive plan amendment, land development regulation, site plan, development permit, or development order approved by a county or municipality under procedures adopted before the effective date of this act may be enforced.

(3) This section shall take effect upon becoming a law and expires June 30, 2025.

Section 15. Paragraph (d) is added to subsection (2) of section 823.11, Florida Statutes, to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(2)

(d) Notwithstanding the additional 45 days provided in sub-subparagraph (b)2.b. during which an owner or a responsible party may not be charged for a violation of this section, the commission, an officer of the commission, a law enforcement agency or officer specified in s. 327.70, or, during a state of emergency declared by the Governor, the Division of Emergency Management or its designee, may immediately begin the process set forth in s. 705.103(2)(a) and, once that process has been completed and the 45 days provided herein have passed, any vessel that has not been removed or repaired such that it is no longer derelict upon the waters of this state may be removed and destroyed as provided therein.

Section 16. (1) For the 2023-2024 fiscal year, the sum of $50 million in nonrecurring funds is appropriated from the General Revenue Fund to the Economic Development Trust Fund of the Department of Economic Opportunity to fund the Local Government Emergency Revolving Bridge Loan Program.

(2) Funds appropriated in section 3 of chapter 2023-1, Laws of Florida, for the Local Government Emergency Bridge Loan Program which have not been loaned to a local government pursuant to a loan agreement as of July 1, 2023, shall be transferred by nonoperating budget authority to the Economic Development Trust Fund of the Department of Economic Opportunity to be used for the Local Government Emergency Revolving Bridge Loan Program.

(3) Notwithstanding sections 1 and 3 of chapter 2023-1, Laws of Florida, all loan repayments for loans made under the Local Government Emergency Bridge Loan Program shall be repaid into the Economic Development Trust Fund and be made available

for loans under the Local Government Emergency Revolving Bridge Loan Program.

Section 17. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2023.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/SB 254
INTRODUCER:	Health Policy Committee and Senator Yarborough and others
SUBJECT:	Treatments for Sex Reassignment
DATE:	March 22, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Brown	HP	**Fav/CS**
2.	Brown	Yeatman	FP	**Pre-Meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 254 creates regulations relating to sex-reassignment prescriptions or procedures, as that term is defined in the bill. The bill:

- Creates a new section of statute relating to the Uniform Child Custody Jurisdiction and Enforcement Act regarding court jurisdiction;
- Prohibits the expenditure of state funds by specified entities for sex-reassignment prescriptions or procedures;
- Prohibits sex-reassignment prescriptions or procedures for patients younger than 18 years of age, except that prescription treatments may continue for such patients whose treatment was commenced before, and is still active on, the bill's effective date, under specified parameters;
- Creates requirements for voluntary, informed consent that must be met in order for a patient 18 years of age or older to be treated with sex-reassignment prescriptions or procedures;
- Provides that only allopathic or osteopathic physicians may provide sex-reassignment prescriptions or procedures;
- Creates criminal penalties for the provision of sex-reassignment prescriptions or procedures in violation of the bill's prohibition or requirements;
- Provides that a practitioner who is arrested for the crime of providing sex-reassignment prescriptions or procedures to a patient younger than 18 years of age may have his or her license suspended via emergency order of the Department of Health (DOH); and
- Requires that any hospital, ambulatory surgical center, or physician's office registered for the provision of office surgery, must provide a signed attestation to the Agency for Health Care Administration (AHCA) or the DOH, as applicable, that the facility or office does not offer or provide sex-reassignment prescriptions or procedures for children, except those qualifying

for the exception under the bill, and also does not refer such patients to other providers for those treatments.

The bill provides that if any provision of the bill, once enacted, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill, and those other provisions or applications can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

The bill takes effect upon becoming a law.

II. Present Situation:

The Uniform Child Custody Jurisdiction and Enforcement Act

Background

Before uniform state custody laws were adopted, it was not uncommon for parents who did not receive legal custody of their children to cross state lines in search of a sympathetic judge who would award them custody. While this approach to "forum shopping" was often successful for parents, it created an awareness that uniform state laws were needed to resolve custody issues. Additionally, and in today's mobile society, it is not uncommon for parents of a child to live in different states or move from state to state. These issues underscore the need to have a framework that accurately determines which state has the authority to decide custody disputes between competing parents.[1]

In recognition of these issues, the Uniform Child Custody Jurisdiction and Enforcement Act, more simply known as the UCCJEA, or the Act, was developed by the Uniform Law Commissioners in 1997. The Act, which has been adopted in each state except Massachusetts, was designed to create uniformity among the states' dueling child custody statutes.[2] Florida adopted the Act in 2002.[3]

The general purposes of the Act are to:

- Avoid jurisdictional competition and conflict with courts of other states in child custody matters.
- Promote cooperation with the courts of other states so that a custody decree is rendered in the state that can best decide the case in the interest of the child.
- Discourage the use of the interstate system for continuing child custody controversies.
- Deter abductions.
- Avoid re-litigating custody decisions in one state that have been determined in other states.
- Facilitate the enforcement of custody decrees of other states.

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[1] Uniform Law Commission, *Child Custody Jurisdiction and Enforcement Act*, Act Summary, *https://www.uniformlaws.org/committees/community-home?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d#:~:text=The%20Uniform%20Child%20Custody%20Jurisdiction,provisions%20for%20child%20custody%20orders*. The predecessor to the act was the Uniform Child Custody Jurisdiction Act, created in 1968. (last visited March 10, 2023).

[2] *Id*.

[3] Ch. 2002-65, s. 5, Laws of Fla. The Act is contained in ss. 61.501 – 61.542, F.S.

- Promote and increase the exchange of information and mutual assistance between this state's courts and other state courts concerning the same child.
- Make uniform law among the states that enact the model law.[4]

Home State Priority

The Act resolves the basic principle of which state has initial jurisdiction to resolve a child custody dispute. Under the provisions of the Act, the home state of the child is given priority and the first opportunity to accept jurisdiction of the case. Any other state involved in the proceedings must defer to the home state, if a home state is determined.[5]

An Alternative to Home State Priority – Temporary Emergency Jurisdiction

While the home state is given priority in establishing jurisdiction under the Act, that jurisdiction is not necessarily exclusive. The Act recognizes unique circumstances under which a state, other than the home state, may also establish jurisdiction. Section 61.517, F.S., for example, provides authority for a court in this state to take temporary emergency jurisdiction in order to protect a child even when it is not the home state and does not have significant connection jurisdiction.

Pursuant to s. 61.517, F.S., a state court has temporary emergency jurisdiction if the child is present in this state and:

- The child has been abandoned; or
- It is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

According to comment notes developed by the drafters of the model act in 1997, temporary emergency jurisdiction may only be taken for the amount of time needed to secure the affected person's safety, whether that is the child, a sibling, or parent. Temporary emergency jurisdiction may "ripen" into what amounts to continuing jurisdiction over a case, but only when no other state capable of asserting continuing jurisdiction is determined, or if that state declines to accept jurisdiction.[6]

Managing Entities

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment,

[4] Section 61.502, F.S.
[5] Uniform Law Commission, *Child Custody Jurisdiction and Enforcement Act: Summary, Home State Priority,* https://www.uniformlaws.org/committees/community-home?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d#:~:text=The%20Uniform%20Child%20Custody%20Jurisdiction,provisions%20for%20child%20custody%20orders (last visited March 10, 2023).
[6] Uniform Law Commission, *Child Custody Jurisdiction and Enforcement Act,* Act Summary, Temporary Emergency Jurisdiction, *https://www.uniformlaws.org/committees/community-home?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d#:~:text=The%20Uniform%20Child%20Custody%20Jurisdiction,provisions%20for%20child%20custody%20orders.*

transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.[7]

In 2001, the Legislature authorized the DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[8] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized the DCF to implement MEs statewide.[9] Full implementation of the statewide managing entity system occurred in 2013, and all geographic regions are now served by a managing entity.[10]

DCF Duties

The DCF must also comply with duties with respect to the MEs, including, in part, to:
- Contract and conduct readiness reviews;
- Specify data reporting requirements and use of shared data systems;
- Define the priority populations that will receive care coordination;
- Support the development and implementation of a coordinated system of care;
- Contract to support efficient and effective administration and ensure accountability for performance; and[11]
- Periodically review contract and reporting requirements and reduce costly, duplicative, and unnecessary administrative requirements.[12]

Contracted MEs

The MEs are required to comply with various statutory duties, including, in part, to:
- Maintain a governing board;
- Promote and support care coordination;[13]
- Develop a comprehensive list of qualified providers;
- Monitor network providers' performances;
- Manage and allocate funds for services in accordance with federal and state laws, rules, regulations and grant requirements; and
- Operate in a transparent manner, providing access to information, notice of meetings, and opportunities for public participation in ME decision making.[14]

Florida Medicaid Managed Care Plans

In Florida, a large majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC)

[7] *See* chs. 394 and 397, F.S.
[8] Chapter 2001-191, L.O.F.
[9] Chapter 2008-243, L.O.F.
[10] Florida Tax Watch, *Analysis of Florida's Behavioral Health Managing Entity Models*, p. 4, March 2015, available at https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15758/Analysis-of-Floridas-Behavioral-Health-Managing-Entities-Model (last visited March 9, 2023).
[11] Section 394.9082(7), F.S., details the performance measurements and accountability requirements of MEs.
[12] Section 394.9082(3), F.S.
[13] Section 394.9082(6), F.S., sets out the network accreditation and systems coordination agreement requirements.
[14] Section 394.9082(5), F.S.

program.[15] SMMC benefits are authorized through federal waivers and are specifically required by the Florida Legislature in ss. 409.973 and 409.98, F.S. SMMC benefits cover primary, acute, preventive, behavioral health, prescribed drugs, long-term care, and dental services.

Hospitals

Hospitals are regulated by the AHCA under ch. 395, F.S., and the general licensure provisions of part II, of ch. 408, F.S. Hospitals offer a range of health care services with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.[16] Hospitals must make regularly available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment.[17]

The AHCA must maintain an inventory of hospitals with an emergency department.[18] The inventory must list all services within the capability of each hospital, and such services must appear on the face of the hospital's license. As of March 2, 2023, there are 323 licensed hospitals in the state.[19]

Section 395.1055, F.S., authorizes the AHCA to adopt rules for hospitals. Separate standards may be provided for general and specialty hospitals.[20] The rules for general and specialty hospitals must include minimum standards to ensure:

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;
- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- Licensed facilities are established, organized, and operated consistent with established standards and rules; and
- Licensed facility beds conform to minimum space, equipment, and furnishing standards.[21]

The minimum standards for hospital licensure are contained in Chapter 59A-3, F.A.C.

Ambulatory Surgical Centers (ASC)

An ASC is a facility that is not a part of a hospital, the primary purpose of which is to provide elective surgical care, in which the patient is admitted and discharged within 24 hours.[22] ASCs are licensed and regulated by the AHCA under the same regulatory framework as hospitals, and

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[15] As of January 31, 2023, Florida Medicaid's total enrollment comprised 5,696,638 persons. Eighty-seven percent were enrolled in a Medicaid managed care plan. *See:* https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/docs/ENR_202301.xls (last visited March 9, 2023).
[16] Section 395.002(12), F.S.
[17] *Id.*
[18] Section 395.1041(2), F.S.
[19] Agency for Health Care Administration, Florida Health Finder Report, available at https://quality.healthfinder.fl.gov/facilitylocator/ListFacilities.aspx, (reports generated on Mar. 3, 2023).
[20] Section 395.1055(2), F.S.
[21] Section 395.1055(1), F.S.
[22] Section 395.002(3), F.S.

the AHCA is authorized to adopt rules specifically for ASCs.[23,24] Currently, there are 501 licensed ASCs in Florida.[25]

Applicants for ASC licensure must submit information detailed in Rule 59A-5.003, F.A.C., to the AHCA prior to accepting patients for care or treatment. Upon receipt of an initial application, the AHCA is required to conduct a survey to determine compliance with all laws and rules. ASCs are required to provide certain information during the initial inspection, including:

- Governing body bylaws, rules, and regulations;
- Medical staff bylaws, rules, and regulations;
- A roster of medical staff members;
- The ASC's nursing procedures manual;
- A roster of registered nurses and licensed practical nurses with current license numbers;
- A fire plan; and
- The comprehensive Emergency Management Plan.[26]

The minimum standards for ASCs are contained in Chapter 59A-5, F.A.C.

Florida's Board of Medicine

The Board of Medicine (BOM) is the state's regulatory board for licensed medical doctors, also known as allopathic physicians. The BOM is composed of 15 members appointed by the Governor and confirmed by the Senate for four year terms who serve until their successors are appointed. Twelve members of the BOM must be licensed physicians in good standing who are state residents and who have been engaged in the active practice or teaching of medicine for at least four years immediately preceding their appointment. One of the physicians must be on the full-time faculty of a medical school in Florida. One physician must be in private practice and a full-time staff member of a statutory teaching hospital in Florida.[27] One physician must be a graduate of a foreign medical school. One member must be a health care risk manager. One member must be age 60 or older. The remaining three members must be residents of Florida who are not, and never have been, licensed health care practitioners.[28]

Florida's Board of Osteopathic Medicine

The Board of Osteopathic Medicine (BOOM) is the state's regulatory board for osteopathic physicians. The BOOM is composed of seven members appointed by the Governor and confirmed by the Senate. Five members of the board must be licensed osteopathic physicians in good standing who are Florida residents and who have been engaged in the practice of osteopathic medicine for at least four years immediately prior to their appointment. At least one

[23] Section 395.1055, F.S.
[24] Sections 395.001-1065, F.S., and Part II, Chapter 408, F.S.
[25] Agency for Health Care Administration, Florida Health Finder Report, available at https://quality.healthfinder.fl.gov/facilitylocator/ListFacilities.aspx, (reports generated on Mar. 3, 2023).
[26] Rule 59A-5.003(5), F.A.C.
[27] See s. 408.07, F.S.
[28] Section 458.307., F.S,

member of the BOOM must be 60 years of age or older. The two members must be citizens of the state who are not, and have never been, licensed health care practitioners.[29]

Office Surgeries

In Florida, surgeries performed in a doctor's office are regulated under ss. 458.328 and 459.0138, F.S. Both sections are identical except for the references to the BOM or the BOOM.

Both statutes require that a physician who performs liposuction procedures in which more than 1,000 cubic centimeters of supernatant fat is removed, Level II surgical procedures, and Level III surgical procedures in an office setting, to register the doctor's office with the DOH, unless that office is licensed as a facility under ch. 395, F.S.

Level II procedures and Level III procedures are not defined in the Florida Statutes, but the respective boards have defined three levels of office surgery by administrative rule,[30] A physician may only perform a procedure or surgery identified in ss. 458.328(1)(a) or 459.0138(1)(a), F.S., in an office that is registered with the DOH. The applicable board must impose a fine of $5,000 a day on a physician who performs a procedure or surgery in an office that is not registered.

As a condition of registration, each office, and each physician practicing at the office, must establish financial responsibility by demonstrating that he or she has met and continues to maintain, at a minimum, the same requirements applicable to physicians in ss. 458.320 and 459.0085, F.S., as applicable. Each registered office must designate a physician who is responsible for the office's compliance with the office health and safety requirements.

The DOH may suspend or revoke the registration of an office in which a procedure or surgery is performed and any of the office's physicians, owners, or operators have failed register or comply with the requirements of ss. 458.238 and 459.0138, F.S. or rules adopted thereunder.

The DOH is required to inspect a registered doctor's office annually unless the office is accredited by a nationally-recognized accrediting agency or an accrediting organization approved by the BOM or the BOOM. The actual costs of registration, inspection, and/or accreditation are to be paid by the person seeking to register and operate the office in which office surgeries are performed. All other aspects of office surgeries are regulated by administrative rules promulgated by the BOM and the BOOM.

Disorders of Sexual Development

Disorders of sexual development (DSD) encompass a group of congenital conditions associated with atypical development of internal and external genital structures. These conditions can be associated with variations in genes, developmental programming, and hormones. Affected individuals may be recognized at birth due to ambiguity of the external genitalia. Others may

[29] Section 459.004, F.S.
[30] See Fla. Admin. Code R. 64B8-9.009 and 64B15-14.007,(2022).

present later with postnatal virilization, delayed/absent puberty, or infertility. The estimated frequency of genital ambiguity is reported to be in the range of 1 to 2000 to 1 to 4500.[31]

Treatments for Sex Reassignment in Minors

There are currently no prohibitions or regulations in the Florida Statutes specifically pertaining to health care practitioners treating minors for sex reassignment, including hormone therapy, surgery, facial hair removal, interventions for the modification of speech and communication, and behavioral adaptations such as genital tucking or packing, or chest binding.[32]

Definitions

The American Academy of Pediatrics (AAP), in a policy statement relating to the care and treatment of gender dysphoric children and youth, defines "sex" as a label, generally "male" or "female," that is typically assigned at birth on the basis of genetic and anatomic characteristics, such as genital anatomy, chromosomes, and sex hormone levels.[33]

According to the American Psychiatric Association (APA), some people will experience "gender dysphoria," which refers to psychological distress that results from an incongruence between one's sex assigned at birth and one's gender identity. Though gender dysphoria often begins in childhood, some people may not experience it until after puberty or much later. The APA defines "gender dysphoria" as a clinical symptom that is characterized by a sense of alienation to some or all of the physical characteristics or social roles of one's assigned gender; with a psychiatric diagnosis in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR),[34] which has its focus on the distress that stems from the incongruence between one's expressed or experienced gender and the birth gender.

People with gender dysphoria may pursue multiple types of interventions or treatments, including social affirmation (e.g., changing one's name and pronouns), legal affirmation (e.g., changing gender markers on one's government-issued documents), medical affirmation (e.g., pubertal suppression or sex-reassignment hormones), and/or surgery (e.g., vaginoplasty, facial feminization surgery, breast augmentation, masculine chest reconstruction, etc.).

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[31] Hughes IA, Nihoul-Fékété C, Thomas B, et al. Consequences of the ESPE/LWPES guidelines for diagnosis and treatment of disorders of sex development. Best Practice Research Clinical Endocrinology Metabolism. Vol. 21, pp. 351–65. [PubMed: 17875484] https://www.clinicalkey.com/#!/content/playContent/1-s2.0-S1521690X07000553?returnurl=null&referrer=null

[32] Deutsch, Madeline B., M.D., M.P.H., Editor; Guidelines for the Primary Care of Transgender and Gender Nonbinary People, Medical Director, UCSF Gender Affirming Health Program Professor of Clinical Family and Community Medicine; University of California, San Francisco, *Overview of gender-affirming treatments and procedures*, available at https://transcare.ucsf.edu/guidelines/overview (last visited Mar. 6, 2023).

[33] The American Academy of Pediatrics, PEDIATRIC, Vol. 142, (4), Oct. 2018, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, available at https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected (last visited Mar. 13, 2023).

[34] Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR). American Psychiatric Association. 2022.

Diagnosis of Gender Dysphoria

The DSM-5-TR provides for one overarching diagnosis for gender dysphoria with separate specific criteria for children and for adolescents and adults.[35]

Gender Dysphoria in Adolescents

The DSM-5-TR defines gender dysphoria in adolescents and adults as a marked incongruence between one's experienced/expressed gender and their assigned gender, lasting at least six months, as manifested by at least two of the following:

- A marked incongruence between one's experienced or expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics);
- A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics);
- A strong desire to have the primary and/or secondary sex characteristics of the other gender;
- A strong desire to be of the other gender (or some alternative gender different from one's assigned gender);
- A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender); or
- A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).[36,37]

In order to meet criteria for the diagnosis, the condition must also be associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.[38]

Gender Dysphoria in Children

The DSM-5-TR defines gender dysphoria in children as a marked incongruence between one's experienced or expressed gender and assigned gender, lasting at least six months, as manifested by at least six of the following (one of which must be the first criterion):

- A strong desire to be of the other gender or an insistence that one is the other gender (or some alternative gender different from one's assigned gender);
- In boys, a strong preference for cross-dressing or simulating female attire; or in girls, a strong preference for wearing only typical masculine clothing and a strong resistance to the wearing of typical feminine clothing;
- A strong preference for cross-gender roles in make-believe play or fantasy play;

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[35] Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR). American Psychiatric Association. 2022.
[36] *Id.*
[37] Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., ... & T'Sjoen, G. G., The Journal of Clinical Endocrinology & Metabolism, 102(11), 3869-3903. (2017), *Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guideline*, available at https://academic.oup.com/jcem/article/102/11/3869/4157558 (last visited Mar. 4, 2023).
[38] *Id.*

- A strong preference for the toys, games, or activities stereotypically used or engaged in by the other gender;
- A strong preference for playmates of the other gender;
- In boys, a strong rejection of typically masculine toys, games, and activities and a strong avoidance of rough-and-tumble play; or in girls, a strong rejection of typically feminine toys, games, and activities;
- A strong dislike of one's own sexual anatomy; or
- A strong desire to have the physical sex characteristics that match one's experienced gender.

As with the diagnostic criteria for adolescents and adults, the condition must also be associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.[39]

Sex Reassignment Treatment for Minors

Behavioral Health Therapy for Minors

Behavioral health therapy may include open-ended exploration of feelings and experiences of gender identity and expression, without the therapist having any pre-defined gender identity or expression outcome defined as preferable to another. According to the AAP, such treatment is best facilitated through the integration of medical, mental health, and social services, including specific resources and supports for parents and families.[40]

Medical Treatment for Minors

According to the AAP policy statement, medical treatment for gender dysphoria involves decisions about whether to and when to initiate treatment and careful consideration of risks, benefits, and other factors unique to each patient and family. Many protocols suggest that clinical assessment of youth diagnosed as gender dysphoric is ideally conducted on an ongoing basis in the setting of a collaborative, multidisciplinary approach, which, in addition to the patient and family, may include the pediatric provider, a mental health provider, social and legal supports, and a pediatric endocrinologist or adolescent-medicine gender specialist, if available.[41]

According to the APA, medical treatment may include pubertal suppression for adolescents with gender dysphoria, and sex reassignment hormones like estrogen and testosterone for older adolescents and adults,[42] but should only be started following the updated American Association

[39] *Id.*
[40] The American Academy of Pediatrics, PEDIATRIC, Vol. 142, (4), Oct. 2018, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, available at https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected (last visited Mar. 6, 2023).
[41] The American Academy of Pediatrics, PEDIATRIC, Vol. 142, (4), Oct. 2018, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, available at https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected (last visited Mar. 6, 2023).
[42] Turban, Jack, M.D., M.H.S., The American Psychiatric Association, *What is Gender Dysphoria? Aug. 2022,* available at https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria#:~:text=Gender%20dysphoria%3A%20A%20concept%20designated,and%2For%20secondary%20sex%20characteristics. (last visited Mar. 4, 2023).

of Clinical Endocrinologists (AACE) clinical practice guidelines published in 2017,[43] which is supported by the American Association of Clinical Endocrinologists, American Society of Andrology, European Society for Pediatric Endocrinology, European Society of Endocrinology, Pediatric Endocrine Society, and World Professional Association for Transgender Health, and which includes specific and extensive guidelines.[44]

Puberty Suppressing Medications

The AACE does not recommend hormone treatment for prepubertal gender dysphoric or gender-incongruent persons. Clinicians who recommend such endocrine treatments must be appropriately trained diagnosing clinicians or a mental health provider for adolescents.[45]

Under the AACE clinical practice guidelines, adolescents are eligible for puberty suppressing hormone treatment if:

- A qualified mental health professional (MHP)[46] has confirmed that:
  - The adolescent has demonstrated a long-lasting and intense pattern of gender nonconformity or gender dysphoria that worsened with the onset of puberty;
  - Any coexisting psychological, medical, or social problems that could interfere with treatment have been addressed, such that the adolescent's situation and functioning are stable enough to start treatment; and
  - The adolescent has sufficient mental capacity to give informed consent to this treatment; and
- The adolescent:
  - Has been informed of the effects and side effects of treatment (including potential loss of fertility if the individual subsequently continues with sex hormone treatment) and options to preserve fertility; and
  - Has given informed consent and (particularly when the adolescent has not reached the age of legal medical consent, depending on applicable laws) the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process; and
  - A pediatric endocrinologist or other clinician experienced in pubertal assessment:
    - Agrees with the indication for puberty blocking hormone treatment;
    - Has confirmed that puberty has started in the adolescent; and
    - Has confirmed that there are no medical contraindications to puberty suppressing hormone treatment.

[43] *Supra,* note 37.
[44] *Id.*
[45] *Id.*
[46] The AACE clinical practice guidelines, advise that only qualified mental health professionals (MHPs) who meet the following criteria should diagnose gender dysphoria or gender incongruence in children and adolescents: Training in child and adolescent developmental psychology and psychopathology; Competence in using the DSM and/or the ICD for diagnostic purposes; The ability to make a distinction between gender dysphoria or gender incongruence and conditions that have similar features (e.g., body dysmorphic disorder); Training in diagnosing psychiatric conditions; The ability to undertake or refer for appropriate treatment; The ability to psychosocially assess the person's understanding and social conditions that can impact sex reassignment hormone therapy; A practice of regularly attending relevant professional meetings; and Knowledge of the criteria for puberty blocking and sex reassignment hormone treatment in adolescents.

The AAP approves of the use of reversible puberty-suppressing hormones in adolescents who experience gender dysphoria to prevent development of secondary sex characteristics and provide time, up until age 16, for the individual and the family to explore gender identity, access psychosocial supports, develop coping skills, and further define appropriate treatment goals. If pubertal suppression treatment is suspended, then endogenous puberty will resume.[47]

Side Effects of Puberty Suppressive Therapy

There is emerging evidence of potential harm from using puberty blockers, according to reviews of scientific papers and interviews with more than 50 doctors and academic experts around the world.[48]

The drugs suppress estrogen and testosterone – hormones that help develop the reproductive system – but also affect the bones, the brain and other parts of the body. During puberty, bone mass typically surges, determining a lifetime of bone health. When adolescents are using blockers, bone density growth stops, on average, according to an analysis commissioned by The New York Times of observational studies examining the effects.[49]

Many doctors treating minors for gender dysphoria believe their patients will recover that loss when they go off blockers. But, two studies from the analysis that tracked patients' bone strength while using blockers, and through the first years of sex hormone treatment, found that many do not fully rebound and lag behind their peers.[50]

That could lead to heightened risk of debilitating fractures earlier than would be expected from normal aging – in their 50s instead of 60s – and more immediate harm for patients who start treatment with already weak bones, experts say.

Many physicians in the U.S. and elsewhere are prescribing blockers to patients at the first stage of puberty – as early as age 8 – and allowing them to progress to sex hormones as soon as 12 or 13. Starting treatment at young ages, they believe, helps patients become better aligned physically with their gender identity and helps protect their bones. But, that could force life-altering choices, other doctors warn, before patients know who they really are. Puberty can help clarify gender, the doctors say, for some adolescents reinforcing their sex at birth, and for others confirming that they are gender dysphoric.[51]

In October 2022, England's National Health Service proposed restricting use of the drugs for gender dysphoric youths to research settings. Sweden and Finland have also placed limits on the treatment, concerned not just with the risk of blockers, but the steep rise in young patients, the

[47] The American Academy of Pediatrics, PEDIATRIC, Vol. 142, (4), Oct. 2018, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, available at https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected (last visited Mar. 6, 2023).
[48] The New York Times, *They Paused Puberty, but Is There a Cost?*, Nov. 14, 2022, available at: https://www.nytimes.com/2022/11/14/health/puberty-blockers-transgender.html (last visited Mar. 10, 2023).
[49] *Id.*
[50] *Id.*
[51] *Id.*

psychiatric issues that many exhibit, and the extent to which their mental health should be assessed before treatment.[52]

A full accounting of puberty blockers' risk to bones is not possible. While the Endocrine Society recommends baseline bone scans and then repeat scans every one to two years for gender dysphoric youths, the World Professional Association for Transgender Health and the AAP provide little guidance about whether to do so. Some doctors require regular scans and recommend calcium and exercise to help to protect bones; others do not. Because most treatment is provided outside of research studies, there's little public documentation of outcomes.[53]

However, it is increasingly evident that the drugs are associated with deficits in bone development. During the teen years, bone density typically surges by about 8 to 12 percent a year. The analysis commissioned by The New York Times examined seven studies from the Netherlands, Canada and England involving about 500 gender dysphoric teens from 1998 through 2021. Researchers observed that while on puberty blockers, the teens did not gain any bone density, on average, and lost significant ground compared to their peers, according to the analysis by researchers at McMaster University in Canada.[54]

If any harm resulted from the use of puberty blockers, it likely would not be evident until decades later, with fractures. However, for children who already have weak bones as they start treatment, the dangers could be more immediate. While there is no systematic record-keeping of such cases, some anecdotal evidence is available.[55]

Medical Risks Associated with Hormone Therapy for Adolescents

According to the AACE clinical practice guidelines, males seeking to transition to female with estrogen, have a very high risk of developing thromboembolic[56] side effects. Males transitioning to female also have a moderate risk of developing the following adverse outcomes:[57]

- Macroprolactinoma;[58]
- Breast cancer;
- Coronary artery disease;
- Cerebrovascular disease;
- Cholelithiasis[59]; and

[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] "Thromboembolic" side effects refer to blood clots in the veins. Merriam Webster Dictionary, available at https://www.merriam-webster.com/dictionary/thromboembolism (last visited Mar. 6, 2023).
[57] *Supra*, note 37.
[58] Macroprolactinoma is a rare tumor with increasing incidence in young people and men, whose biological behavior seems to be more aggressive. Clinically, it manifests in the form of visual disturbances and/or headaches due to the compressive effect of the tumor and symptoms arising from the hyperprolactinemia. Iglesias, J.J. Diez, QJM: An International Journal of Medicine, Volume 106, (6), pp. 495–504, Jan. 16, 2013, available at https://academic.oup.com/qjmed/article/106/6/495/1538299 (last visited Mar. 6, 2023).
[59] Cholelithiasis means production of gallstones, Merriam Webster Dictionary, available at https://www.merriam-webster.com/dictionary/cholelithiasis (last visited Mar. 6, 2023).

- Hypertriglyceridemia.[60]

According to the AACE clinical practice guidelines, females seeking to transition to male with testosterone, have a very high risk of experiencing erythrocytosis[61] and a moderate risk of the following adverse reactions:

- Severe liver dysfunction;
- Coronary artery disease;
- Cerebrovascular disease;
- Hypertension; and
- Breast or uterine cancer.[62]

Sexual Reassignment Surgeries

A wide range of surgeries are available. Those include surgeries specific to sex reassignment, as well as procedures commonly performed for purposes unrelated to sex reassignment. Surgeries specific to sex reassignment include:[63]

- Feminizing vaginoplasty;
- Masculinizing phalloplasty and scrotoplasty;
- Metoidioplasty;[64]
- Masculinizing chest surgery ("top surgery");
- Facial feminization procedures;
- Reduction thyrochondroplasty (tracheal cartilage shave); and
- Voice surgery.

According to the AAP policy statement and the 2017 AACE clinical practice guidelines, these surgeries are typically performed on adults, although adolescents may be considered on a case by case basis. Eligibility criteria for surgical interventions among adolescents are not clearly defined between established protocols and practice. Eligibility is to be determined on a case-by-case basis with the adolescent and the family, along with input from medical, mental health, and surgical providers.

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[60] Hypertriglyceridemia is a condition in which triglyceride levels (fats) are elevated in your blood. The Cleveland Clinic, *What is Hypertriglyceridemia?* available at https://my.clevelandclinic.org/health/diseases/23942-hypertriglyceridemia (last visited Mar. 6, 2023).

[61] Erythrocytosis is having a high concentration of red blood cells. Your levels may be high for many reasons. Some causes, like dehydration, are less concerning than others, like polycythemia vera, a serious blood disorder. Getting diagnosed and receiving treatment can prevent complications associated with erythrocytosis, like life-threatening blood clots. The Cleveland Clinic, *Erythrocytosis,* available at https://my.clevelandclinic.org/health/diseases/23468-erythrocytosis (last visited Mar. 6, 2023).

[62] *Supra,* note 37.

[63] Deutsch, Madeline B., M.D., M.P.H., Editor; Guidelines for the Primary Care of Transgender and Gender Nonbinary People, Medical Director, UCSF Gender Affirming Health Program Professor of Clinical Family and Community Medicine; University of California, San Francisco, *Supporting Evidence For Providing Gender-Affirming Treatments And Procedures* available at: https://transcare.ucsf.edu/guidelines/overview (last visited Mar. 6, 2023).

[64] *See* https://my.clevelandclinic.org/health/treatments/21668-metoidioplasty (last visited Mar. 10, 2023).

Federal Position on Sex Reassignment Medical Treatment

On May 25, 2021, the U.S. Department of Health and Human Services (HHS) published a notification consistent with the U.S. Supreme Court's decision in *Bostock v. Clayton County*[65] that HHS would interpret and enforce s. 1557 of the Affordable Care Act (ACA) to prohibiting discrimination on the basis of sex to include:

- Discrimination on the basis of sexual orientation; and
- Discrimination on the basis of gender identity.[66]

Section 1557 of the ACA prohibits discrimination on the bases of race, color, national origin, sex, age, and disability in covered health programs or activities.[67] The HHS interpretation guides the Office for Civil Rights (OCR) in processing complaints and conducting investigations but does not itself determine the outcome in any particular case or set of facts.

On March 2, 2022, HHS issued additional guidance, indicating that s. 1557 of the ACA prohibits health care programs that are federally funded from discriminating against patients on the basis of sex and prohibits federally funded entities from restricting an individual's ability to receive medically necessary health care, including sex reassignment treatment, on the basis of birth sex or gender identity, based on *Bostock*.[68]

In response, Texas filed a lawsuit against the HHS and the Equal Opportunity Employment Commission (EEOC). October 1, 2022, the Federal District Court issued an opinion and order declaring the March 2, 2022, HHS guidance concerning sex reassignment medical treatment to be arbitrary, capricious, unlawful, in violation of the Federal Administrative Procedure Act, and set it aside.[69]

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[65] *Bostock v. Clayton County, 590 U.S. ___; 140 S. Ct. 1731; 207 L. Ed. 2d 218; 2020 WL 3146686; 2020 U.S. LEXIS 3252* (2020). On June 15, 2020, the U.S. Supreme Court held that everyone in every state in the country who works at or applies for a job with an employer that has at least 15 employees is protected under federal law against employment discrimination based on sexual orientation or gender identity.

[66] National Archives and records administration, Federal Register, *Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972*, available at https://www.federalregister.gov/documents/2021/05/25/2021-10477/notification-of-interpretation-and-enforcement-of-section-1557-of-the-affordable-care-act-and-title#:~:text=Section%201557%20prohibits%20discrimination%20on,Rights%20Act%20of%201964%20(Pub. last visited Mar. 3, 2023).

[67] 42 U.S.C. 18116(a),which states: An individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000D et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or SECTION 794 OF TITLE 29, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title 1 (or amendments). The enforcement mechanisms provided for and available under such title VI, title IX, section 794, or such Age Discrimination Act shall apply for purposes of violations of this subsection.

[68] U.S. Department Of Health And Human Services, Office for Civil Rights, *HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy*, March 2, 2022, available at https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf (last visited Mar. 3, 2023).

[69] *Texas vs. EEOC, et. al*, U.S. District Court, Nor. Dist. Texas, Case # 2:21-CV-194-Z, *Opinion and Order*, Oct. 1, 2022, available at https://www.eeoc.gov/sites/default/files/2022-10/downloadfile.pdf (last visited Mar. 3, 2023).

The HHS Office of Civil Rights is evaluating its next steps in light of the judgment in *Texas v. EEOC* but is reportedly complying with the court's order.[70]

On June 15, 2022, President Joe Biden signed Executive Order 14075,[71] which calls on the U.S. Department of Education and the HHS to increase access to sex reassignment medical treatment and develop ways to counter state efforts aimed at limiting such treatments for minors.[72]

Florida's Position on Sex Reassignment Medical Treatment

Department of Health Guidelines

On April 20, 2022, the DOH issued Florida guidelines for *Treatment of Gender Dysphoria for Children and Adolescents*[73] to clarify evidence cited on a fact sheet[74] released one month earlier by the HHS for the purpose of providing federal guidance on treating gender dysphoria for children and adolescents.

The DOH guidance from April 2022 included the following:

- Systematic reviews on hormonal treatment for young people show a trend of low-quality evidence, small sample sizes, and medium to high risk of bias.
- A paper published in the International Review of Psychiatry states that 80 percent of those seeking clinical care will lose their desire to identify with the non-birth sex.
- Due to the lack of conclusive evidence, and the potential for long-term, irreversible effects, the DOH guidelines are as follows:
  - Social gender transition should not be a treatment option for children or adolescents.
  - Anyone under 18 should not be prescribed puberty blockers or hormone therapy.
  - Gender reassignment surgery should not be a treatment option for children or adolescents.
  - Children and adolescents should be provided social support by peers and family and seek counseling from a licensed provider.
- These guidelines do not apply to procedures or treatments for children or adolescents born with a genetically or biochemically verifiable disorder of sex development (DSD).

These DOH guidelines are non-binding and do not carry the force of law or rule. The guidance ended with "Parents are encouraged to reach out to their child's health care provider for more information." The BOM and the BOOM – not the DOH nor the Surgeon General – have

[70] *Supra*, note 68.
[71] Federal Registry, Vol. 87., No. 188, June 15, 2022, Executive Order 14075, *Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals*, available at https://www.govinfo.gov/content/pkg/FR-2022-06-21/pdf/2022-13391.pdf (last visited Mar. 7, 2023).
[72] Neugeboren, Eric, Jun. 15, 2022, The Texas Tribune, *Biden Signs Order to Protect Transgender Children as Texas Continues Efforts to Restrict Gender-Affirming Care*, available at https://www.texastribune.org/2022/06/15/joe-biden-texas-transgender-care/ (last visited Mar. 7, 2023).
[73] Florida Department of Health, *Treatment of Gender Dysphoria for Children and Adolescents* Apr. 20, 2022, available at https://www.floridahealth.gov/_documents/newsroom/press-releases/2022/04/20220420-gender-dysphoria-guidance.pdf (last visited Mar. 3, 2023).
[74] Office of the Assistant Secretary for Health, Office of Population Affairs, *Gender-Affirming Care and Young People*, available at https://opa.hhs.gov/sites/default/files/2022-03/gender-affirming-care-young-people-march-2022.pdf (last visited Mar. 13, 2023).

statutory authority to establish standards of care by rule for physicians who may treat patients diagnosed with gender dysphoria.

BOM and BOOM Rule Making

On July 28, 2022, the DOH filed a *Petition to Initiate Rulemaking* to set standards of care for the treatment of gender dysphoria[75] with the BOM for the care and treatment of minors with gender dysphoria, to preserve the health, safety, and welfare of the public under s. 20.43, F.S.

The DOH petition asserted it was necessary for the BOM to establish a standard of care for the treatment of gender dysphoria for children and adolescents because:

- The HHS had issued guidance encouraging early treatment for gender dysphoria with an array of services, including psychological, medical, and surgical interventions;
- The AACE and the AAP had issued similar guidance based on low-quality evidence plagued with small sample sizes and high risks of bias;
- The above endorsements had permeated both the general public and health care community and created the false impression that chemical and surgical intervention was not only clinically proven but was also the standard of care for treatment of gender dysphoria in Florida;
- The AHCA had conducted a study and issued a report[76,77] in June of 2022 to determine whether such procedures were consistent with generally-accepted professional medical standards, and had concluded that:
    - Available medical literature provided insufficient evidence that sex reassignment through medical interventions was a safe and effective treatment for gender dysphoria;
    - Puberty blockers were not approved by the FDA for the treatment of gender dysphoria, were not medically efficacious for the treatment of gender dysphoria, and had permanent side effects;
    - Hormonal treatments in adolescents can achieve their intended physical effects but reliable evidence regarding their psychological and cognitive impact was generally lacking;
    - Treatments can cause irreversible physical changes;
    - Surgical interventions for gender dysphoria included multiple procedures to alter the appearance of the body to resemble the individual's desired gender, were not reversible, and the long-term mental health effects of these procedures were largely unknown;
    - Due to the stark contrast regarding the efficacy of sex reassignment treatment, the confusion it has caused, and the lack of quality evidence regarding the effectiveness of such treatments, it was necessary for the BOM to provide preemptory guidance to the medical community to protect the health, safety, and welfare of Floridians.

[75] Florida Board of Medicine, Public Book 0805292022 FB2 p. 870, available upon request at the Florida Department of Health, Board of Medicine, 4052 Bald Cypress Way Bin C-03, Tallahassee, FL 32399-3253, 850-488-0595.
[76] Agency for Health Care Administration, *Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria,* June 2022, available at https://www.ahca.myflorida.com/letkidsbekids/docs/AHCA_GAPMS_June_2022_Report.pdf (last visited Mar. 9, 2023).
[77] The attachments to the AHCA report are available at: https://ahca.myflorida.com/let-kids-be-kids (last visited Mar. 20, 2023).

The BOM considered the petition at its meeting on August 5, 2022, and voted to begin rulemaking proceedings through forming a joint committee with the BOOM. The boards received thousands of emails,[78] took testimony from board members, members of the public, and stakeholders on multiple occasions regarding the language for the rule. The BOM ultimately adopted the following rule with an effective date of March 16, 2023.

> 64B8-9.019 Standards of Practice for the Treatment of Gender Dysphoria in Minors.
> (1) The following therapies and procedures performed for the treatment of gender dysphoria in minors are prohibited.
> (a) Sex reassignment surgeries, or any other surgical procedures, that alter primary or secondary sexual characteristics.
> (b) Puberty blocking, hormone, and hormone antagonist therapies.
> (2) Minors being treated with puberty blocking, hormone, or hormone antagonist therapies prior to the effective date of this rule may continue with such therapies.

A proposed BOOM rule is identical but is still in its rule making process.[79]

Florida Medicaid's Rule for General Medicaid Policy

One day after issuing its June 2022 report on "Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria," the AHCA issued a notice of development of rulemaking. On June 17, 2022, AHCA proposed an amendment to its General Medicaid Policy, Rule 59G-1.050, F.A.C., which was finalized and became effective on August 21, 2022.

The rule amendment provides that Florida Medicaid does not cover services for the treatment of gender dysphoria, including: puberty blockers, hormones, hormone antagonists, sex reassignment surgeries, or any other procedures that alter primary or secondary sexual characteristics. This amendment to the rule applies to all age groups.

Opponents of this change to the rule argue that it violates the sex discrimination protections provided under the equal protection clauses in the U.S. and Florida Constitutions and the federal code and rules relating to Medicaid by discriminating against people on the basis of their sex, gender status, and gender identity. A lawsuit[80] was filed on September 7, 2022, against the AHCA in federal court, seeking a preliminary injunction to enjoin Florida Medicaid from applying the new rule. However, the injunction was denied in October 2022, so the rule is in effect, pending further action as the case progresses.

Nine other states (Arizona, Nebraska, Texas, Missouri, Arkansas, Kentucky, Ohio, Tennessee, and Georgia) exclude coverage of hormone therapy, top surgery, and bottom surgery in their state Medicaid programs, either in statute or in agency rule or policy. Seventeen states have not taken a position for their Medicaid programs. The other 24 states have differing policies,

[78] Email from Executive Director, Florida Board of Medicine, Florida Department of Health, March 7, 2023 (on file with the Senate Committee on Health Policy)..
[79] *Id.*
[80] *See* https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/filed_complaint_against_ahca.pdf (last visited Mar. 10, 2023).

authorizing some level of Medicaid coverage for surgeries and/or hormone therapy. Of those states, some states offer full coverage of such services and others provide coverage for those above 15, 16, or 18 years of age.

Other State Laws Prohibiting Sex Reassignment Treatments in Minors

Seven states, including Alabama, Arizona, Arkansas, Mississippi, Tennessee, Texas and Utah, recently enacted laws or policies restricting youth access to sex reassignment medical treatment in general and, in some cases, imposing penalties on adults facilitating access. Arkansas' 2021 law has been permanently enjoined,[81] but SB 199, entitled *Protecting Minors from Medical Malpractice Act of 2023*, currently is moving through the Arkansas legislature.[82] Alabama's law is also currently enjoined but that ruling is under appeal at the Federal 11th Circuit Court of Appeals and is awaiting the court's opinion.[83]

III. Effect of Proposed Changes:

Section 1 of the bill amends Florida's Uniform Child Custody Jurisdiction and Enforcement Act by creating s. 61.5175, F.S., to provide that, notwithstanding any other provision of the Act, a court of this state has jurisdiction to enter, modify, or stay a child custody determination relating to a child who is present in this state to the extent necessary to protect the child from being subjected to sex-reassignment prescriptions or procedures, as defined in s. 456.001, F.S., in another state.

Section 2 of the bill creates s. 286.31, F.S., to prohibit a governmental entity, the state group health insurance program, a managing entity as defined in s. 394.9082, F.S., or a managed care plan providing services in the SMMC program, from expending state funds as described in s. 215.31, F.S., for sex-reassignment prescriptions or procedures as defined in s. 456.001, F.S. The bill defines "governmental entity" to mean the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; and any agencies that are subject to ch. 286, F.S.

Section 3 of the bill creates a new subsection (6) of s. 395.003, F.S., to provide that, by July 1, 2023, each licensed hospital or ASC must provide a signed attestation to the AHCA stating that

[81] In 2021 Arkansas passed a law prohibiting sex reassignment treatment for minors, including puberty blockers, hormone therapy, and sex reassignment surgery. The law prohibited the use of insurance or public funds, including through Medicaid, for coverage of these services for minors.
[82] Arkansas SB 199 (2023), available at https://legiscan.com/AR/text/SB199/2023 (last visited Mar. 7, 2023).
[83] In April 2022, Alabama enacted a law that prevents transgender minors from receiving sex reassignment treatment, including puberty blockers, hormone therapy, and surgical intervention. The bill makes it a felony for any person to "engage in or cause" a transgender minor to receive any of these treatments, punishable by up to 10 years in prison or a fine up to $15,000. A lawsuit was filled challenging the law's constitutionality and the Federal District Court enjoined Alabama from enforcing part of the law criminalizing sex reassignment treatment for children; and Alabama appealed the injunction. *See* Holmes, Jacob; Alabama Political Reporter, Nov. 21, 2022, *State Appeals to Lift Injunction on Law Criminalizing Treatment of Transgender Youth*, available at https://www.alreporter.com/2022/11/21/state-appeals-to-lift-injunction-on-law-criminalizing-treatment-of-transgender-youth/ (last visited March 6, 2023). The 11th Circuit heard oral argument November 18, 2022, but no opinion has been issued as of March 13, 2023. *See Paul Eknes-Tucker v. Governor of the State of Alabama*, Oral Argument, available at https://www.courtlistener.com/audio/83873/paul-eknes-tucker-v-governor-of-the-state-of-alabama/ (last visited Mar. 6, 2023).

the facility does not offer or provide sex-reassignment prescriptions or procedures, as defined in s. 456.001, F.S., to patients younger than 18 years of age who do not qualify for the exception specified in Section 5 of the bill, and does not refer such patients to other providers for such services.

Beginning July 1, 2023, each licensed facility must provide the signed attestation to the AHCA upon initial licensure and as a requirement for each licensure renewal. Under the due process requirements provided in ch. 120, F.S., the AHCA must revoke the license of any licensed facility that fails to provide the required attestation.

Section 4 of the bill amends s. 456.001, F.S., to provide the following definitions:

- "Sex" means the classification of a person as either male or female based on the organization of the human body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.
- "Sex-reassignment prescriptions or procedures" means:
  - The prescription or administration of puberty blockers for the purpose of attempting to stop or delay normal puberty in order to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex as defined in subsection (8).
  - The prescription or administration of hormones or hormone antagonists to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex as defined in subsection (8).
  - Any medical procedure, including a surgical procedure, to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex as defined in subsection (8).
- "Sex-reassignment prescriptions or procedures" does not include:
  - Treatment provided by a physician who, in his or her good faith clinical judgment, performs procedures upon or provides therapies to a minor born with a medically verifiable genetic disorder of sexual development, including any of the following:
    - External biological sex characteristics that are unresolvably ambiguous.
    - A disorder of sexual development in which the physician has determined through genetic or biochemical testing that the patient does not have a normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female, as applicable.
  - Prescriptions or procedures to treat an infection, an injury, a disease, or a disorder that has been caused or exacerbated by the performance of any sex-reassignment prescription or procedure, regardless of whether such prescription or procedure was performed in accordance with state or federal law or whether such prescription or procedure is covered by the private rights of action under ss. 766.102 and 768.042, F.S.
  - Prescriptions or procedures provided to a patient for the treatment of a physical disorder, physical injury, or physical illness that would, as certified by a physician licensed under ch. 458 or ch. 459, F.S., place the individual in imminent danger of death or impairment of a major bodily function without the prescription or procedure.

Section 5 of the bill creates s. 456.52, F.S., to provide that:

- Sex-reassignment prescriptions and procedures are prohibited for patients younger than 18 years of age, except that:

    - The BOM and the BOOM must adopt emergency rules pertaining to standards of practice under which a patient younger than 18 years of age may continue to be treated with such prescription if such treatment for sex reassignment was commenced before, and is still active on, the effective date of the bill.
    - A patient meeting the criteria above may continue to be treated by a physician with such prescriptions according to rules adopted by the boards.
- If sex-reassignment prescriptions or procedures are prescribed for or administered or performed on patients 18 years of age or older, consent must be voluntary, informed, and in writing on forms approved by the DOH. Consent to sex-reassignment prescriptions or procedures is voluntary and informed only if the physician who is to prescribe or administer the pharmaceutical product or perform the procedure has, at a minimum, while physically present in the same room:
    - Informed the patient of the nature and risks of the prescription or procedure in order for the patient to make a prudent decision;
    - Provided the informed consent form, as approved by the DOH, to the patient; and
    - Received the patient's written acknowledgment, before the prescription or procedure is prescribed, administered, or performed, that the information required to be provided has been provided.
- The requirement for such consent does not apply to renewals of prescriptions relating to sex reassignment if a physician and his or her patient have met the requirements for consent for the initial prescription or renewal. However, separate consent is required for any new prescription for such a pharmaceutical product not previously prescribed to the patient.
- Sex-reassignment prescriptions or procedures may not be prescribed, administered, or performed except by a physician, defined as a physician licensed under ch. 458 or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the federal government.
- Violation of these provisions constitutes grounds for practitioner disciplinary action.
- Any health care practitioner who willfully or actively participates in a violation of the bill's provisions relating to providing treatment to a child commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.
- Any health care practitioner who violates the bill's requirements relating to consent or the prohibition against non-physicians providing such treatments commits a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.

The DOH is directed to adopt emergency rules to implement Section 5 of the bill. Any emergency rules adopted under Section 5 are exempt from the expiration that normally applies to emergency rules and will remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act.

Section 6 of the bill amends s. 456.074, F.S., to provide that if a health care practitioner is arrested for the crime of providing treatments for sex reassignment to a child who does not qualify for the exception specified in Section 5 of the bill, the practitioner is subject to an emergency order issued by the DOH to immediately suspend his or her license.

Sections 7 and 8 of the bill amend ss. 458.328 and 459.0138, F.S., respectively, to provide that, by July 1, 2023, each allopathic or osteopathic physician office registered for the performance of office surgeries must provide a signed attestation to the DOH stating that the office does not

offer or provide sex-reassignment prescriptions or procedures to patients younger than 18 years of age who do not qualify for the exception specified in Section 5 of the bill, and does not refer such patients to other providers for such services.

Beginning July 1, 2023, any office seeking registration must provide such signed attestation to the DOH. An office's failure to provide the signed attestation is grounds for denial of registration or the suspension or revocation of registration.

Section 9 of the bill provides that if any provision of the bill, once enacted, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill, and those other provisions or applications can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

Section 10 of the bill directs the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in the bill with the date the bill becomes a law.

Section 11 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have a fiscal impact on hospitals, ASCs, or physician offices registered for office surgery that fail to provide the attestation required under sections 3, 7, and 8 of the bill. The bill may have an indeterminate fiscal impact on persons seeking sex reassignment treatment and health care practitioners or facilities who provide such treatment.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on governmental entities specified under Section 2 of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

395.003, 456.001, 456.52, 456.074, 458.328, 459.0138, 61.5175, 286.31
This bill substantially amends the following sections of the Florida Statutes: 395.003, 456.001, 456.52, 456.074, 458.328, and 459.0138.

This bill repeals the following sections of the Florida Statutes: 61.5175, 286.31, and 456.52.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 13, 2023:
The CS:

- Replaces the underlying bill's provisions regarding child custody orders with a provision to give Florida courts jurisdiction to enter, modify, or stay a child custody determination for a child present in Florida to the extent necessary to protect the child from being subjected to sex reassignment treatments in another state, notwithstanding other provisions within the Florida Uniform Child Custody Jurisdiction and Enforcement Act; and
- Modifies the provisions for criminal penalties so that they apply only to health care practitioners who violate certain prohibitions or requirements, as opposed to any person other than the patient as provided in the underlying bill.

B. Amendments:

None.

By the Committee on Health Policy; and Senators Yarborough, Perry, and Broxson

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A bill to be entitled

An act relating to treatments for sex reassignment; creating s. 61.5175, F.S.; granting courts of this state jurisdiction to enter, modify, or stay a child custody determination relating to a child present in this state to the extent necessary to protect the child from being subjected to sex-reassignment prescriptions or procedures in another state; creating s. 286.31, F.S.; defining the term "governmental entity"; prohibiting certain public entities from expending state funds for the provision of sex-reassignment prescriptions or procedures; amending s. 395.003, F.S.; requiring certain licensed facilities, by a specified date and as a condition of licensure thereafter, to provide a signed attestation of specified information to the Agency for Health Care Administration; requiring the agency to revoke a facility's license for failure to provide such attestation, subject to the due process procedures of ch. 120, F.S.; amending s. 456.001, F.S.; defining the terms "sex" and "sex-reassignment prescriptions or procedures"; creating s. 456.52, F.S.; prohibiting sex-reassignment prescriptions and procedures for patients younger than 18 years of age; providing an exception; requiring the Board of Medicine and the Board of Osteopathic Medicine to adopt certain emergency rules; requiring that such prescriptions and procedures for patients older than 18 years of age be prescribed, administered, or performed only with the

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voluntary and informed consent of the patient; providing criteria for what constitutes voluntary and informed consent; providing that only a physician may prescribe, administer, or perform such prescriptions and procedures; defining the term "physician"; providing applicability; providing for disciplinary action; providing criminal penalties; requiring the Department of Health to adopt certain emergency rules; providing that such emergency rules remain in effect until they are replaced by nonemergency rules; amending s. 456.074, F.S.; requiring the department to immediately suspend the license of a health care practitioner who is arrested for committing or attempting, soliciting, or conspiring to commit specified violations related to sex-reassignment prescriptions or procedures for a patient younger than 18 years of age; amending ss. 458.328 and 459.0138, F.S.; requiring registered physicians' offices to provide a signed attestation of specified information to the department by a specified date; beginning on a specified date, requiring physicians' offices seeking such registration to provide the signed attestation as a condition of registration; providing grounds for disciplinary action; providing severability; providing a directive to the Division of Law Revision; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 61.5175, Florida Statutes, is created to read:

61.5175 Protection of children from sex-reassignment prescriptions or procedures.—Notwithstanding any other provision of this part, a court of this state has jurisdiction to enter, modify, or stay a child custody determination relating to a child who is present in this state to the extent necessary to protect the child from being subjected to sex-reassignment prescriptions or procedures, as defined in s. 456.001, in another state.

Section 2. Section 286.31, Florida Statutes, is created to read:

286.31 Prohibited use of state funds.—

(1) As used in this section, the term "governmental entity" means the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; and any agencies that are subject to chapter 286.

(2) A governmental entity, the state group health insurance program, a managing entity as defined in s. 394.9082, or a managed care plan providing services under part IV of chapter 409 may not expend state funds as described in s. 215.31 for sex-reassignment prescriptions or procedures as defined in s. 456.001.

Section 3. Present subsections (6) through (10) of section 395.003, Florida Statutes, are redesignated as subsections (7) through (11), respectively, a new subsection (6) is added to that section, and present subsections (9) and (10) of that

section are amended, to read:

395.003 Licensure; denial, suspension, and revocation.—

(6) By July 1, 2023, each licensed facility must provide a signed attestation to the agency stating that the facility does not offer or provide sex-reassignment prescriptions or procedures, as defined in s. 456.001, to patients younger than 18 years of age, unless authorized under s. 456.52(1)(b), and does not refer such patients to other providers for such services. Beginning July 1, 2023, each licensed facility shall provide the signed attestation to the agency upon initial licensure and as a requirement for each licensure renewal. Under the due process requirements provided in chapter 120, the agency must revoke the license of any licensed facility that fails to provide the attestation required by this subsection.

(10)~~(9)~~ A hospital licensed as of June 1, 2004, shall be exempt from subsection (9) ~~(8)~~ as long as the hospital maintains the same ownership, facility street address, and range of services that were in existence on June 1, 2004. Any transfer of beds, or other agreements that result in the establishment of a hospital or hospital services within the intent of this section, shall be subject to subsection (9) ~~(8)~~. Unless the hospital is otherwise exempt under subsection (9) ~~(8)~~, the agency shall deny or revoke the license of a hospital that violates any of the criteria set forth in that subsection.

(11)~~(10)~~ The agency may adopt rules implementing the licensure requirements set forth in subsection (9) ~~(8)~~. Within 14 days after rendering its decision on a license application or revocation, the agency shall publish its proposed decision in the Florida Administrative Register. Within 21 days after

publication of the agency's decision, any authorized person may file a request for an administrative hearing. In administrative proceedings challenging the approval, denial, or revocation of a license pursuant to subsection (9) ~~(8)~~, the hearing must be based on the facts and law existing at the time of the agency's proposed agency action. Existing hospitals may initiate or intervene in an administrative hearing to approve, deny, or revoke licensure under subsection (9) ~~(8)~~ based upon a showing that an established program will be substantially affected by the issuance or renewal of a license to a hospital within the same district or service area.

Section 4. Subsections (8) and (9) are added to section 456.001, Florida Statutes, to read:

456.001 Definitions.—As used in this chapter, the term:

(8) "Sex" means the classification of a person as either male or female based on the organization of the human body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.

(9)(a) "Sex-reassignment prescriptions or procedures" means:

1. The prescription or administration of puberty blockers for the purpose of attempting to stop or delay normal puberty in order to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex as defined in subsection (8).

2. The prescription or administration of hormones or hormone antagonists to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex

as defined in subsection (8).

3. Any medical procedure, including a surgical procedure, to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex as defined in subsection (8).

(b) The term does not include:

1. Treatment provided by a physician who, in his or her good faith clinical judgment, performs procedures upon or provides therapies to a minor born with a medically verifiable genetic disorder of sexual development, including any of the following:

a. External biological sex characteristics that are unresolvably ambiguous.

b. A disorder of sexual development in which the physician has determined through genetic or biochemical testing that the patient does not have a normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female, as applicable.

2. Prescriptions or procedures to treat an infection, an injury, a disease, or a disorder that has been caused or exacerbated by the performance of any sex-reassignment prescription or procedure, regardless of whether such prescription or procedure was performed in accordance with state or federal law.

3. Prescriptions or procedures provided to a patient for the treatment of a physical disorder, physical injury, or physical illness that would, as certified by a physician licensed under chapter 458 or chapter 459, place the individual in imminent danger of death or impairment of a major bodily

function without the prescription or procedure.

Section 5. Section 456.52, Florida Statutes, is created to read:

456.52 Sex-reassignment prescriptions and procedures; prohibitions; informed consent.—

(1) Sex-reassignment prescriptions and procedures are prohibited for patients younger than 18 years of age, except that:

(a) The Board of Medicine and the Board of Osteopathic Medicine shall adopt emergency rules pertaining to standards of practice under which a patient younger than 18 years of age may continue to be treated with a prescription consistent with those referenced under s. 456.001(9)(a)1. or 2. if such treatment for sex reassignment was commenced before, and is still active on, the effective date of this act.

(b) A patient meeting the criteria of paragraph (a) may continue to be treated by a physician with such prescriptions according to rules adopted under paragraph (a) or nonemergency rules adopted under paragraph (6)(b).

(2) If sex-reassignment prescriptions or procedures are prescribed for or administered or performed on patients 18 years of age or older, consent must be voluntary, informed, and in writing on forms approved by the department. Consent to sex-reassignment prescriptions or procedures is voluntary and informed only if the physician who is to prescribe or administer the pharmaceutical product or perform the procedure has, at a minimum, while physically present in the same room:

(a) Informed the patient of the nature and risks of the prescription or procedure in order for the patient to make a

prudent decision;

(b) Provided the informed consent form, as approved by the department, to the patient; and

(c) Received the patient's written acknowledgment, before the prescription or procedure is prescribed, administered, or performed, that the information required to be provided under this subsection has been provided.

(3) Sex-reassignment prescriptions or procedures may not be prescribed, administered, or performed except by a physician. For the purposes of this section, the term "physician" is defined as a physician licensed under chapter 458 or chapter 459 or a physician practicing medicine or osteopathic medicine in the employment of the Federal Government.

(4) Consent required under subsection (2) does not apply to renewals of prescriptions consistent with those referenced under s. 456.001(9)(a)1. and 2. if a physician and his or her patient have met the requirements for consent for the initial prescription or renewal. However, separate consent is required for any new prescription for a pharmaceutical product not previously prescribed to the patient.

(5)(a) Violation of this section constitutes grounds for disciplinary action under this chapter and chapter 458 or chapter 459, as applicable.

(b) Any health care practitioner who willfully or actively participates in a violation of subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any health care practitioner who violates subsection (2), subsection (3), or subsection (4) commits a misdemeanor of

the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6)(a) The department shall adopt emergency rules to implement this section.

(b) Any emergency rules adopted under this section are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act.

Section 6. Present paragraphs (c) through (gg) of subsection (5) of section 456.074, Florida Statutes, are redesignated as paragraphs (d) through (hh), respectively, and a new paragraph (c) is added to that subsection, to read:

456.074 Certain health care practitioners; immediate suspension of license.—

(5) The department shall issue an emergency order suspending the license of any health care practitioner who is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of any of the following criminal offenses in this state or similar offenses in another jurisdiction:

(c) Section 456.52(5)(b), relating to prescribing, administering, or performing sex-reassignment prescriptions or procedures for a patient younger than 18 years of age.

Section 7. Paragraph (c) of subsection (1) of section 458.328, Florida Statutes, is amended to read:

458.328 Office surgeries.—

(1) REGISTRATION.—

(c) Each of the following is ~~As~~ a condition of registration:~~,~~

1. An ~~each~~ office must establish financial responsibility by demonstrating that it has met and continues to maintain, at a minimum, the same requirements applicable to physicians in ss. 458.320 and 459.0085.

2. Each physician practicing at an office registered under this section or s. 459.0138 must meet the financial responsibility requirements under s. 458.320 or s. 459.0085, as applicable.

3. By July 1, 2023, each office registered under this section must provide a signed attestation to the department stating that the office does not offer or provide sex-reassignment prescriptions or procedures, as defined in s. 456.001, to patients younger than 18 years of age, unless authorized under s. 456.52(1)(b), and does not refer such patients to other providers for such services. Beginning July 1, 2023, any office seeking registration must provide such signed attestation to the department. An office's failure to provide the signed attestation is grounds for denial of registration or the suspension or revocation of registration under paragraph (f).

Section 8. Paragraph (c) of subsection (1) of section 459.0138, Florida Statutes, is amended to read:

459.0138 Office surgeries.—

(1) REGISTRATION.—

(c) Each of the following is ~~As~~ a condition of registration:~~,~~

1. An ~~each~~ office must establish financial responsibility by demonstrating that it has met and continues to maintain, at a minimum, the same requirements applicable to physicians in ss.

458.320 and 459.0085.

2. Each physician practicing at an office registered under this section or s. 458.328 must meet the financial responsibility requirements under s. 458.320 or s. 459.0085, as applicable.

3. By July 1, 2023, each office registered under this section must provide a signed attestation to the department stating that the office does not offer or provide sex-reassignment prescriptions or procedures, as defined in s. 456.001, to patients younger than 18 years of age , unless authorized under s. 456.52(1)(b), and does not refer such patients to other providers for such services. Beginning July 1, 2023, any office seeking registration must provide such signed attestation to the department. An office's failure to provide the signed attestation is grounds for denial of registration or the suspension or revocation of registration under paragraph (f).

Section 9. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 10. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 11. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/SB 258
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Burgess
SUBJECT:	Prohibited Applications on Government-issued Devices
DATE:	March 22, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McVaney	GO	**Fav/CS**
2.	Harmsen	Yeatman	FP	**Pre-Meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 258 instructs the Department of Management Services (DMS) to create a list of prohibited applications, defined as those that (1) are created, maintained, or owned by a foreign principal and that engage in specific activities that endanger cybersecurity; or (2) present a security risk in the form of unauthorized access to or temporary unavailability of a public employer's information technology systems or data, as determined by the DMS. This definition will likely include TikTok and WeChat.

The bill requires public employers (including state agencies, public education institutions, and local governments) to:

- Block access to prohibited applications on any wireless network or virtual private network that it owns, operates, or maintains;
- Restrict access to prohibited applications on any government-issued device; and
- Retain the ability to remotely wipe and uninstall prohibited applications from a compromised government-issued device.

All persons are prohibited from downloading prohibited applications on a government-issued device, and officers and employees of a public employer must remove any prohibited application from their government-issued device within 15 calendar days of the DMS' issuance of a list of prohibited applications.

The bill allows the use of prohibited applications by law enforcement officers, if the use is necessary to protect the public safety or to conduct an investigation. It also allows other government employees to use a prohibited application, if they are granted a waiver by the DMS.

The bill provides emergency rulemaking authority to the DMS to adopt a list of prohibited applications, and general rulemaking authority to implement a process by which it can grant waivers from the prohibition.

The impact on state and local government expenditures is indeterminate.

The bill takes effect on July 1, 2023.

II. Present Situation:

TikTok and WeChat

TikTok is a smartphone application that allows its more than 1 billion global users, of which 113 million are U.S.-based, to share videos with each other.[1] TikTok is owned by ByteDance Ltd., a privately held company incorporated in the Cayman Islands, with a headquarters in Beijing, China.[2] WeChat is a smartphone application that offers multiple functions, including messaging, payment processing, ridesharing, and photo sharing with an estimated 1 billion monthly active users.[3] WeChat is owned by TenCent Holdings, Ltd., a publicly traded corporation that is headquartered in China.[4] Both applications, by permissions of their users, collect several data points from their users, including location data and internet address, and the type of device that is used to access the application. The applications share the ability to collect GPS data, network contacts, and user information (e.g., age and preferred content).[5]

These companies are under increasing scrutiny by the U.S. government as a potential privacy and security risk to U.S. citizens.[6] This is because they, like all technology companies that do business in China, are subject to Chinese laws that require companies that operate in the country to turn over user data, intellectual property, and proprietary commercial secrets when requested

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[1] DATAREPORTAL.COM, *TikTok Statistics and Trends* (Jan. 2023), https://datareportal.com/essential-tiktok-stats (last visited Mar. 14, 2023).
[2] ByteDance, Inc., *About Us*, https://www.bytedance.com/en/ (last visited Mar. 14, 2023). *See also*, NEWSWEEK, Chloe Mayer, *Is TikTok Owned by the Chinese Communist Party?* (Oct. 17, 2022), *available at* https://www.newsweek.com/tiktok-owned-controlled-china-communist-party-ccp-influence-1752415 (last visited Mar. 14, 2023).
[3] CONGRESSIONAL RESEARCH SERVICE, Patricia Moloney Figliola, *TikTok: Technology Overview and Issues* (Dec. 4, 2020), https://crsreports.congress.gov/product/pdf/R/R46543 (last visited Mar. 14, 2023).
[4] BUSINESS OF APPS, Mansoor Iqbal, *WeChat Revenue and Usage Statistics* (2022) (Sept. 6, 2022) https://www.businessofapps.com/data/wechat-statistics/ (last visited Mar. 14, 2023).
[5] WeChat, *WeChat Privacy Policy* (Sept. 9, 2022), https://www.wechat.com/en/privacy_policy.html (last visited Mar. 14, 2023).
6 *See, e.g.*, Federal Bureau of Investigation, Remarks delivered by Director Christopher Wray, *The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States* (Jul. 7, 2020), *available at* https://www.fbi.gov/news/speeches/the-threat-posed-by-the-chinese-government-and-the-chinese-communist-party-to-the-economic-and-national-security-of-the-united-states (last visited Mar. 14, 2023).

by the government.[7] TikTok recently moved its U.S. data servers to U.S. locations to "help to protect against unauthorized access to user data."[8] In one instance, confirmed by TikTok, two employees improperly used the application's data to track the location of journalists who wrote a negative story about the business; one employee was fired and another resigned as a result of their improper actions.[9]

There are also allegations that TikTok manipulates its algorithm to provide misinformation to its users.[10]

Federal, State, and Local Actions

In August 2020, President Trump signed two executive orders that prohibited commercial transactions between U.S. citizens and TikTok [11] and required ByteDance to divest from any asset that supports TikTok's U.S.-arm.[12] President Trump also took similar action proposing to ban transactions with WeChat.[13] While these executive orders were subject to injunction in different courts, they were revoked ultimately by a subsequent executive order issued by President Biden.

Congress passed the "No TikTok on Government Devices Act" as part of the omnibus spending bill in December 2022.[14] The law directs the Office of Management and Budget (OMB) to create standards and guidelines for the removal of TikTok from government devices. On February 27, 2023, the OMB issued guidance that requires all executive agencies and their contractors that use IT[15] to remove and disallow installations of TikTok within 30 days.[16] The guidance allows

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[7] Nazak Nikakhtar, U.S. *Businesses Must Navigate Significant Risk of Chinese Government Access to Their Data* (Mar. 22, 2021), https://www.jdsupra.com/legalnews/u-s-businesses-must-navigate-3014130/ (last visited Mar. 14, 2023). *See also*, note 3, *supra* at p. 6.
[8] TikTok, *Delivering on our US Data Governance* (Jun. 17, 2022), https://newsroom.tiktok.com/en-us/delivering-on-our-us-data-governance (last visited Mar. 14, 2023).
[9] FORBES, Emily Baker-White, *Exclusive: TikTok Spied on Forbes Journalists* (Dec. 22, 2022), https://www.forbes.com/sites/emilybaker-white/2022/12/22/tiktok-tracks-forbes-journalists-bytedance/?sh=3bd5d3327da5 (last visited Mar. 14, 2023).
[10] AP NEWS, Haleluya Hadero, *Why TikTok is Being Banned on Government Phones in US and Beyond* (Feb. 28, 2023) https://apnews.com/article/why-is-tiktok-being-banned-7d2de01d3ac5ab2b8ec2239dc7f2b20d (last visited Mar. 14, 2023).
[11] President Donald J. Trump, *Executive Order on Addressing the Threat Posed by TikTok* (Aug. 6, 2020), https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-addressing-threat-posed-tiktok/ (last visited Mar. 14, 2023).
[12] President Donald J. Trump, *Executive Order Regarding the Acquisition of Musical.ly by ByteDance Ltd.* (Aug. 14, 2020), https://home.treasury.gov/system/files/136/EO-on-TikTok-8-14-20.pdf. (last visited Mar. 14, 2023).
[13] President Donald J. Trump, *Executive Order on Addressing the Threat Posed by WeChat* (Aug. 6, 2020), https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-addressing-threat-posed-wechat/ (last visited Mar. 14, 2023).
[14] Pub. L. No. 117-328, div. R, §§101-102.
[15] "Information technology" means "any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used […] directly or is used by a contractor under a contract with the executive agency […]" and includes computers, peripheral equipment, software, firmware, services, and related resources. 40 U.S.C. §11101(6).
[16] Office of Management and Budget, *Memorandum: No TikTok on Government Devices Implementation Guidance* (Feb. 27, 2023), https://www.whitehouse.gov/wp-content/uploads/2023/02/M-23-13-No-TikTok-on-Government-Devices-Implementation-Guidance_final.pdf (last visited Mar. 14, 2023).

exceptions to the use and installation ban for the purposes of law enforcement activities, national security interests and activities, and security research.

As of March 2023, at least 24 states have enacted, through various forms of state action (but not legislation), bans on the use of high-risk software and services on state devices or over state-owned networks.[17]

On March 7, 2023, the Miami-Dade County Commission voted to ban TikTok from its county's work phones.[18]

State Information Technology Management

The Department of Management Services (DMS) oversees information technology (IT) governance and security for the executive branch of the State government.[19] The Florida Digital Service (FLDS) within the DMS was established by the Legislature in 2020;[20] the head of FLDS is appointed by the Secretary of DMS and serves as the state chief information officer (CIO).[21]

The FLDS was created to modernize state government technology and information services.[22] Accordingly, the DMS, through the FLDS, has the following powers, duties, and functions:

- Develop IT policy for the management of the state's IT resources;
- Develop an enterprise architecture;
- Establish IT project management and oversight standards for state agencies;
- Oversee state agency IT projects that cost $10 million or more and that are funded in the General Appropriations Act or any other law; and[23]
- Standardize and consolidate IT services that support interoperability, Florida's cloud first policy, and other common business functions and operations.

[17] GOVERNMENT TECHNOLOGY, Andrew Adams, *Updated; Where is TikTok Banned? Tracking State by State* (Dec. 14, 2022), https://www.govtech.com/biz/data/where-is-tiktok-banned-tracking-the-action-state-by-state (last visited Mar. 14, 2023).
[18] NBC MIAMI, Heather Walker, *Miami-Dade Commissioners Vote to Ban TikTok on County Devices* (Mar. 7, 2023), https://www.nbcmiami.com/news/local/miami-dade-commissioners-vote-to-ban-tiktok-on-county-devices/2988107/ (last visited Mar. 14, 2023).
[19] Section 282.0051, F.S.
[20] Ch. 2020-161, Laws of Fla.
[21] Section 282.0051(2)(a), F.S.
[22] Section 282.0051(1), F.S.
[23] The FLDS provides project oversight on IT projects that have a total cost of $20 million or more for the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services. Section 282.0051(1)(m), F.S.

State Cybersecurity Act

The State Cybersecurity Act[24] requires the DMS and the heads of state agencies to meet certain requirements to enhance state agencies' cybersecurity.[25] Specifically, the DMS, acting through the FLDS, must:[26]

- Assess state agency cybersecurity risks and determine appropriate security measures consistent with generally accepted best practices for cybersecurity.
- Adopt rules to mitigate risk, support a security governance framework, and safeguard state agency digital assets, data, information, and IT resources[27] to ensure availability, confidentiality, and integrity.
- Designate a chief information security officer (CISO) who must develop, operate, and oversee state technology systems' cybersecurity. The CISO must be notified of all confirmed or suspected incidents or threats of state agency IT resources and must report such information to the CIO and the Governor.
- Develop and annually update a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for cyber incidents.
- Develop a cybersecurity governance framework and publish it for state agency use.
- Assist state agencies in complying with the State Cybersecurity Act.
- Train state agency information security managers and computer security incident response team members, in collaboration with the Florida Department of Law Enforcement (FDLE) Cybercrime Office, on issues relating to cybersecurity, including cybersecurity threats, trends, and best practices.
- Provide cybersecurity training to all state agency technology professionals that develop, assess, and document competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system.
- Annually review state agencies' strategic and operational cybersecurity plans.
- Track, in coordination with agency inspectors general, state agencies' implementation of remediation plans.
- Operate and maintain a Cybersecurity Operations Center led by the CISO to serve as a clearinghouse for threat information and to coordinate with the FDLE to support state agency response to cybersecurity incidents.
- Lead an Emergency Support Function under the state comprehensive emergency management plan.

[24] Section 282.318, F.S.
[25] "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology resources. Section 282.0041(8), F.S.
[26] Section 282.318(3), F.S.
[27] "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. Section 282.0041(22), F.S.

The State Cybersecurity Act requires the head of each state agency to designate an information security manager to administer the cybersecurity program of the state agency.[28] In addition, agency heads must:

- Establish an agency cybersecurity incident response team, which must report any confirmed or suspected cybersecurity incidents to the CISO.
- Submit an annual strategic and operational cybersecurity plan to the DMS.
- Conduct a triennial comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency.
- Develop and update internal policies and procedures, including procedures for reporting cybersecurity incidents and breaches to the FLDS and the Cybercrime Office.
- Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the DMS to address identified risks to the data, information, and IT resources of the agency.
- Ensure periodic internal audits and evaluations of the agency's cybersecurity program.
- Ensure that cybersecurity contract requirements of IT and IT resources and services meet or exceed applicable state and federal laws, regulations, and standards for cybersecurity, including the NIST cybersecurity framework.
- Provide cybersecurity awareness training to all state agency employees concerning cybersecurity risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks. The training may be provided in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system.
- Develop a process, consistent with FLDS rules and guidelines, to detect, report, and respond to threats, breaches, or cybersecurity incidents.

Florida Cybersecurity Advisory Council

The Florida Cybersecurity Advisory Council (Advisory Council) within the DMS[29] protects IT resources from cyber threats and incidents.[30] The Advisory Council must assist the FLDS with the implementation of best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force – a task force created to review and assess the state's cybersecurity infrastructure, governance, and operations.[31] The Advisory Council meets at least quarterly to:[32]

- Review existing state agency cybersecurity policies.
- Assess ongoing risks to state agency IT.
- Recommend a reporting and information sharing system to notify state agencies of new risks.
- Recommend data breach simulation exercises.

[28] Section 282.318(4)(a), F.S.
[29] Section 282.319(1), F.S.
[30] Section 282.319(2), F.S.
[31] Section 282.319(3), F.S. The Cybersecurity Task Force is no longer active. *See*, Florida DMS, *Cybersecurity Task Force Overview*, https://www.dms.myflorida.com/other_programs/cybersecurity_advisory_council/cybersecurity_task_force (last visited Mar. 14, 2023).
[32] Section 282.319(9), F.S.

- Develop cybersecurity best practice recommendations for state agencies, including continuous risk monitoring, password management, and protecting data in legacy and new systems.
- Examine inconsistencies between state and federal law regarding cybersecurity.

Beginning June 30, 2022, and each June 30 thereafter, the Advisory Council must submit cybersecurity recommendations to the Legislature.[33]

III. Effect of Proposed Changes:

The bill bans the use of prohibited applications on devices issued to an employee or officer by a public employer, or otherwise used on a network that is owned, operated, or maintained by a public employer.

Section 1 creates s. 112.22, F.S., to require the Department of Management Services (DMS) to create and maintain a list of prohibited applications of any Internet application that it deems to present a security risk in the form of unauthorized access to, or temporary unavailability of the public employer's records, digital assets, systems, networks, servers, or information. A "prohibited application" is alternatively defined as any that participates in certain activities, such as conducting cyber-espionage against a public employer, and that is created, maintained, or owned by a foreign principal.

The DMS must adopt this list of prohibited applications through rulemaking, publish the list on its website, and disseminate it to public employers.

A foreign principal includes only the following:
- The government or any official of the government of a foreign country of concern;
- A political party or member of a political party in a foreign country of concern;
- A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, or an affiliate or subsidiary thereof; or
- Any person domiciled in a foreign country of concern who is not a citizen of the United States.

Public employers must:
- Block access to any prohibited application via their wireless networks and virtual private networks;
- Restrict access to any prohibited application on any government cell phone, laptop, desktop computer, tablet computer, or other electronic device that can connect to the Internet that has been issued to an employee or officer for a work-related purpose; and
- Retain the ability to remotely wipe and uninstall any prohibited application from any such device that is believed to have been adversely impacted by a prohibited application.

Additionally, the bill prohibits all persons from downloading or accessing any prohibited application on a government-issued device. However, officers and employees may procure a

[33] Section 282.319(11), F.S.

waiver to access a prohibited application from the DMS. Law enforcement officers are wholly exempted from the applications ban if their use of the application is necessary to protect the public safety or to conduct an investigation.

The bill requires an employee or officer to remove any prohibited application from his or her government-issued device within 15 days of the DMS' publication of its list of prohibited applications, and within 15 days of any subsequent update to the list of prohibited applications.

The bill grants the DMS rulemaking authority to administer these provisions. Specifically, the DMS is vested with emergency rulemaking authority to adopt the list of prohibited applications into rule. The DMS's determination of a prohibited application must be on the basis of an application's engagement in specific activities, or on the basis of the presentation of a security risk in the form of unauthorized access to or temporary unavailability of the state's digital assets, systems, networks, servers, or information.

The bill also grants the DMS authority to adopt rules that specify the waiver process, which must require all of the following:

- A description that the employee or officer will conduct, and the state interest that is furthered by the activity;
- The maximum number of government-issued devices and employees or officers to which the waiver will apply;
- The length of time necessary for the waiver, which cannot exceed 1 year (but may be extended through another waiver);
- Risk mitigation strategies that will be instituted to protect state systems, networks, and servers from malicious activity; and
- A description of the circumstances under which the waiver applies.

Section 2 provides a declaration of an important state interest that its information technology resources be protected from security breaches.

Section 3 provides that the bill will take effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless:"

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

The bill requires a county or municipality to take certain actions regarding the security of its IT network and government-issued devices. To comply with this law, the county or

municipality may be required to spend funds. The bill applies to all similarly situated governmental agencies that have IT networks and issue devices, including state agencies, counties, municipalities, special districts, school districts, universities, and colleges. At this time, the bill does not include a legislative finding that the bill fulfills an important state interest. The bill may not be binding on counties and municipalities unless the bill exempt from the mandates requirements because the overall fiscal impact is insignificant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Legislature may not delegate its constitutional duties to another branch of government.[34] While the Legislature must make fundamental policy decisions, it may delegate the task of implementing that policy to executive agencies with "some minimal standards and guidelines ascertainable by reference to the enactment establishing the program."[35] Moreover, the Legislature can permit "administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions."[36]

Florida courts have found an unlawful delegation of legislative authority in the following instances:

- Where the Legislature allowed the Department of State to "in its discretion allow such a candidate to withdraw…";[37] and
- Where the Legislature created a criminal penalty for escape from certain classifications of juvenile detention facilities, but delegated the classification (or determination whether to classify at all) to an agency.[38]

Comparatively, the Legislature's delegation of rulemaking authority to the Florida Game and Freshwater Fish Commission (FWC) to implement the Legislature's ban on owning wildlife was deemed a proper delegation. The Legislature's provision of a statutory definition of the term "wildlife' as those animals that posed a "real or potential threat to

[34] *See* FLA. CONST. art. II, s. 3.
[35] *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla. 1978).
[36] *Microtel, Inc. v. Fla. Public Serv. Comm'n.*, 464 So.2d 1189, 1191 (Fla. 1991).
[37] *Fla. Dep't. of State, Div. of Elections v. Martin*, 916 So.2d 763 (Fla. 2005).
[38] *D.P. v. State*, 597 So.2d 952 (Fla. 1st DCA, 1992)(disapproved on other grounds).

human safety" provided sufficient confines to the FWC's duty to further define the term by rulemaking.[39]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DMS will be required to conduct research into a large number of existing applications offered to create a list of prohibited applications. This will be an ongoing effort, as new applications are created and offered daily.

Additionally, the DMS will be required to create rules associated with the implementation of this bill, in particular to provide agency procedures regarding the waiver process, and to create and update the list of prohibited applications.

State agencies and local government entities may incur indeterminate costs to comply with the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There is no penalty stated in the bill; however, an employer may fire an employee on the basis of his or her violation of law.

The bill provides for a waiver process, administered by the DMS. This will result in government entities creating, and the DMS holding specific information that could reveal what government employees are using a prohibited application, and which may explain their purpose for the use. If this information were obtained for insidious purposes, the government user's legitimate purpose could be undermined, and the user could be targeted for data mining or other illegitimate purposes.

[39] *State v. Cumming*, 365 So.2d. 153, 155 (Fla. 1978). While the Court further found the Legislature's delegation of wildlife permitting authority to the FWC to be an appropriate delegation of authority, they overturned the particular application of the law because the rules adopted by the FWC were overbroad and vague, so a reasonable purchaser could not reasonably interpret the guidelines applied to them.

VIII. Statutes Affected:

112.22
This bill creates section 112.22, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 15, 2023:

- Defines a prohibited application as one that poses a security risk, either on the basis of specific activities, or as a result of a finding by the DMS, based on the application's risk of unauthorized access to or temporary unavailability of the public employer's records, digital assets, systems, networks, servers, or information;
- Prohibits any person, not just employees, from downloading or accessing a prohibited application on a government-issued device;
- Provides emergency rulemaking authority to the DMS to institute a rule that identifies prohibited applications, and general rulemaking authority to update it thereafter;
- Requires the DMS to update the list of prohibited applications at least quarterly, and to distribute it to public employers;
- Allows officers or employees of a public employer 15 days from the publication or provision of an update of the DMS' list of prohibited applications to comply therewith;
- Specifies certain requirements that the DMS must incorporate into its waiver process; and
- Replaces the term "employee" with "officer and employee" and "governmental entity or public education institution" with "public employer," which includes schools, local governments, state agencies, and charter school governing boards.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability; and Senator Burgess

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A bill to be entitled

An act relating to prohibited applications on government-issued devices; creating s. 112.22, F.S.; defining terms; requiring public employers to take certain actions relating to prohibited applications; prohibiting employees and officers of public employers from downloading or accessing prohibited applications on government-issued devices; providing exceptions; providing a deadline by which specified employees must remove, delete, or uninstall a prohibited application; requiring the Department of Management Services to compile a specified list and establish procedures for a specified waiver; authorizing the department to adopt emergency rules; requiring that such rulemaking occur within a specified timeframe; requiring the department to adopt specified rules; providing a declaration of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 112.22, Florida Statutes, is created to read:

112.22 Use of applications from foreign countries of concern prohibited.—

(1) As used in this section, the term:

(a) "Department" means the Department of Management Services.

(b) "Employee or officer" means a person who performs labor

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or services for a public employer in exchange for salary, wages, or other remuneration.

(c) "Foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

(d) "Foreign principal" means:

1. The government or an official of the government of a foreign country of concern;

2. A political party or a member of a political party or any subdivision of a political party in a foreign country of concern;

3. A partnership, an association, a corporation, an organization, or another combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, or an affiliate or a subsidiary thereof; or

4. Any person who is domiciled in a foreign country of concern and is not a citizen of the United States.

(e) "Government-issued device" means a cellular telephone, desktop computer, laptop computer, computer tablet, or other electronic device capable of connecting to the Internet which is owned or leased by a public employer and issued to an employee or officer for work-related purposes.

(f) "Prohibited application" means an application that meets the following criteria:

1. Any Internet application that is created, maintained, or

owned by a foreign principal and that participates in activities that include, but are not limited to:

a. Collecting keystrokes or sensitive personal, financial, proprietary, or other business data;

b. Compromising e-mail and acting as a vector for ransomware deployment;

c. Conducting cyber-espionage against a public employer;

d. Conducting surveillance and tracking of individual users; or

e. Using algorithmic modifications to conduct disinformation or misinformation campaigns; or

2. Any Internet application the department deems to present a security risk in the form of unauthorized access to or temporary unavailability of the public employer's records, digital assets, systems, networks, servers, or information.

(g) "Public employer" means the state or any agency, authority, branch, bureau, commission, department, division, special district, institution, university, institution of higher education, or board thereof; or any county, district school board, charter school governing board, or municipality, or any agency, branch, department, board, or metropolitan planning organization thereof.

(2)(a) A public employer shall do all of the following:

1. Block all prohibited applications from public access on any network and virtual private network that it owns, operates, or maintains.

2. Restrict access to any prohibited application on a government-issued device.

3. Retain the ability to remotely wipe and uninstall any

prohibited application from a government-issued device that is believed to have been adversely impacted, either intentionally or unintentionally, by a prohibited application.

(b) A person, including an employee or officer of a public employer, may not download or access any prohibited application on any government-issued device.

1. This paragraph does not apply to a law enforcement officer as defined in s. 943.10(1) if the use of the prohibited application is necessary to protect the public safety or conduct an investigation within the scope of his or her employment.

2. A public employer may request a waiver from the department to allow designated employees or officers to download or access a prohibited application on a government-issued device.

(c) Within 15 calendar days after the department issues or updates its list of prohibited applications pursuant to paragraph (3)(a), an employee or officer of a public employer who uses a government-issued device must remove, delete, or uninstall any prohibited applications from his or her government-issued device.

(3) The department shall do all of the following:

(a) Compile and maintain a list of prohibited applications and publish the list on its website. The department shall update this list quarterly and shall provide notice of any update to public employers.

(b) Establish procedures for granting or denying requests for waivers pursuant to subparagraph (2)(b)2. The request for a waiver must include all of the following:

1. A description of the activity to be conducted and the

state interest furthered by the activity.

2. The maximum number of government-issued devices and employees or officers to which the waiver will apply.

3. The length of time necessary for the waiver. Any waiver granted pursuant to subparagraph (2)(b)2. must be limited to a timeframe of no more than 1 year, but the department may approve an extension.

4. Risk mitigation actions that will be taken to prevent access to sensitive data, including methods to ensure that the activity does not connect to a state system, network, or server.

5. A description of the circumstances under which the waiver applies.

(4)(a) Notwithstanding s. 120.74(4) and (5), the department is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4) and to implement paragraph (3)(a). Such rulemaking must occur initially by filing emergency rules within 30 days after July 1, 2023.

(b) The department shall adopt rules necessary to administer this section.

Section 2. The Legislature finds that a proper and legitimate state purpose is served when efforts are taken to secure a public employer's system, network, or server. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 3. This act shall take effect July 1, 2023.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/SB 382
INTRODUCER:	Criminal Justice Committee and Senator Bradley
SUBJECT:	Compensation for Wrongfully Incarcerated Persons
DATE:	March 22, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	**Fav/CS**
2.	Atchley	Harkness	ACJ	**Favorable**
3.	Cellon	Yeatman	FP	**Pre-Meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 382 amends the Victims of Wrongful Incarceration Compensation Act by amending s. 961.02, F.S., to remove an unnecessary definition.

The bill amends s. 961.03, F.S., to:

- Prospectively extend the filing deadline for a petition under the Act from 90 days to within two years after an order vacating a conviction and sentence becomes final and the criminal charges against a person are dismissed or the person is retried and acquitted, if the person's conviction and sentence is vacated on or after July 1, 2023.
- Retroactively authorize a person to file a petition for determination of status as a wrongfully incarcerated person and determination of eligibility for compensation by July 1, 2025, under specified circumstances.
- Provide that a deceased person's heirs, successors, or assigns do not have standing to file a petition on the deceased person's behalf.

Section 961.04, F.S., is amended to remove the bar to compensation for a petitioner who has been convicted of a violent felony or multiple nonviolent felonies before or during his or her wrongful conviction and incarceration. A person continues to be ineligible for compensation for any period of wrongful incarceration during which the person was serving a concurrent sentence for which he or she was not wrongfully incarcerated.

Section 961.06, F.S., is amended to prohibit the Chief Financial Officer (CFO) from drawing a warrant to purchase an annuity to pay a claimant for his or her wrongful incarceration if the claimant is currently incarcerated under specified circumstances.

Section 961.07, F.S., is amended to provide for funds to be appropriated.

While there are existing limitations on compensation ($50,000 per year of wrongful incarceration up to a limit of $2 million) for a qualified claimant, it is not possible to quantify the additional number of people who may be compensable. Therefore, any fiscal impact from the bill is unquantifiable.

The bill becomes effective July 1, 2023.

II. Present Situation:

Victims of Wrongful Incarceration Act

Since 2000, 21 people in Florida have been exonerated or released from incarceration as a result of post-conviction DNA testing, false or misleading forensic evidence, mistaken identity, perjury, or false accusations.[1] In 2008, the Legislature created The Victims of Wrongful Incarceration Compensation Act (Act).[2] The Act provides a process by which a person whose conviction and sentence is vacated based upon exonerating evidence may petition the court to seek and obtain compensation as a "wrongfully incarcerated person."[3]

A "wrongfully incarcerated person" is a person whose felony conviction and sentence has been vacated by a court and for whom the original sentencing court has issued an order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to the offense.[4]

To date, five people have qualified for and been awarded a total of $6,276,900 compensation under the Act.[5]

[1] Frank Lee Smith, Jerry Townsend, Rudolph Holton, Wilton Dedge, Luis Diaz, Orlando Boquete, Alan Crotzer, Larry Bostic, Cody Davis, Chad Heins, William Dillon, James Bain, Anthony Caravella, Derrick Williams, Cheydrick Britt, Narcisse Antoine, Clemente Aguirre-Jarquin, Dean McKee, Ronald Stewart, and Robert Duboise have been released from prison or exonerated in Florida. The National Registry of Exonerations, https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=State&FilterValue1=Florida&FilterField2=DNA&FilterValue2=8%5FDNA (last visited March 1, 2023).

[2] Chapter 2008–39, L.O.F.

[3] To be eligible for compensation, a person must meet the definition of a "wrongfully incarcerated person" and not be otherwise disqualified from seeking compensation under the Act because of disqualifying criminal history. Section 961.02(4), F.S.

[4] Section 961.02(7), F.S.

[5] E-mail from the Department of Legal Affairs dated February 13, 2023, on file with the Senate Criminal Justice Committee.

Petition Process

To receive compensation under the Act, an exonerated person must file a petition with the original sentencing court seeking status as a "wrongfully incarcerated person." Section 961.03(1)(a), F.S., requires a petitioner to state:

- That verifiable and substantial evidence of actual innocence exists;
- With particularity, the nature and significance of the evidence of actual innocence; and
- That the person is not disqualified under s. 961.04, F.S., from seeking compensation because he or she has specified criminal history.

A person seeking compensation under the Act must file a petition with the court within 90 days after the order vacating a conviction and sentence becomes final, if the person's conviction and sentence is vacated on or after July 1, 2008.[6]

Although a petitioner must submit proof of actual innocence in his or her petition, in some cases, after a conviction is overturned, the state may choose to retry the person. In these cases, the 90 day filing deadline may require a petitioner to file a petition with proof of actual innocence while he or she is still in custody or facing retrial. According to the Innocence Project, six exonerees in Florida are barred from receiving compensation as a result of missing the 90 day filing deadline.[7]

Once the petition is filed, the prosecuting authority must respond to the petition within 30 days by:

- Certifying to the court that, based upon the petition and verifiable and substantial evidence of the petitioner's actual innocence, no further criminal proceedings can or will be initiated against the petitioner, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under s. 961.04, F.S.; or
- Contesting the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration, or whether the petitioner is ineligible from seeking compensation under s. 961.04, F.S.[8]

If the prosecuting authority certifies the petitioner's innocence and that no further charges can or will be filed and that he or she is otherwise eligible for compensation, the original sentencing court[9] must certify to the Department of Legal Affairs (DLA) that the petitioner qualifies as a wrongfully incarcerated person and is eligible for compensation under s. 961.04, F.S.[10]

If the prosecuting authority contests the petitioner's actual innocence or eligibility for compensation based on his or her prior criminal history:

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[6] Or by July 1, 2010, if the person's conviction and sentence was vacated by an order that became final prior to July 1, 2008. Section 961.03(1)(b), F.S.

[7] Jeffrey Gutman, *Compensation Under the Microscope*, George Washington University Law School, (2022) https://www.law.umich.edu/special/exoneration/Documents/UTM%20Florida.pdf (last visited March 1, 2023).

[8] Section 961.03(2), F.S.

[9] Based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense. Section 961.03(3), F.S.

[10] Section 961.03(3), F.S.

- The original sentencing court must use the pleadings and supporting documents to determine whether, by a preponderance of the evidence, the petitioner is ineligible for compensation under s. 961.04, F.S., regardless of his or her claim of wrongful incarceration.
  - If the court finds that the petitioner is ineligible under s. 961.04, F.S., it must dismiss the petition.[11]
  - And the court determines that the petitioner is eligible under s. 961.04, F.S., but the prosecuting authority also contests the nature, significance or effect of the evidence of the petitioner's actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court is required to set forth its findings on eligibility and transfer the petition to the Division of Administrative Hearings (DOAH).[12]

When a petition is transferred to the DOAH, a hearing before an administrative law judge (ALJ) must take place within 120 days after the transfer.[13] At the hearing, the petitioner must establish, by clear and convincing evidence, any questions of fact, the nature, significance or effect of the evidence of actual innocence, and his or her eligibility for compensation under the Act.[14] The prosecuting authority must appear at the hearing to contest any evidence of actual innocence presented by the petitioner.[15] When the hearing concludes, the ALJ is required to file an order with the original sentencing court within 45 days setting forth his or her findings and recommendation as to whether the petitioner established by clear and convincing evidence that he or she qualifies as a wrongfully incarcerated person.[16]

Once the ALJ issues his or her findings and recommendation, the original sentencing court must, within 60 days, issue its own order adopting or declining to adopt the ALJ's findings and recommendation.[17] If the original sentencing court concludes that the petitioner qualifies as a wrongfully incarcerated person who is eligible for compensation under the Act, the court must issue an order certifying its findings to the DLA.[18]

The "Clean Hands" Provision

When the Act was passed in 2008,[19] a person was ineligible to receive compensation under s. 961.04, F.S., if he or she was previously convicted of any other felony. As such, s. 961.04, F.S., became commonly known as the "clean hands" requirement. The Act was amended in 2017,[20] to expand eligibility under the "clean hands" requirement, making a petitioner ineligible to receive compensation if he or she was:

- Convicted of any violent felony, or any crime committed in another jurisdiction the elements of which would constitute a violent felony in Florida, or a federal crime designated a violent

[11] Section 961.03(4)(a), F.S.
[12] Section 961.03(4)(b), F.S.
[13] Section 961.03(6)(a), F.S.
[14] Section 961.03(5), F.S.
[15] Section 961.03(6)(b), F.S.
[16] Section 961.03(6)(c), F.S.
[17] Section 961.03(6)(d), F.S.
[18] The order must indicate that the ALJ's findings are correct and the petitioner has met his or her burden of proof to establish status as a wrongfully convicted person or if the ALJ findings indicate that the petitioner has not met his or her burden of proof, that the court is declining to adopt the findings of the ALJ. Section 961.03(7), F.S.
[19] Chapter 2008-39, L.O.F.
[20] Chapter 2017-120, L.O.F.

felony, excluding any delinquency disposition, before or during his or her wrongful conviction and incarceration;
- Convicted of more than one nonviolent felony, or more than one crime committed in another jurisdiction the elements of which would constitute a felony in Florida, or more than one federal crime designated a felony, excluding any delinquency disposition, before or during his or her wrongful conviction and incarceration; or
- Serving a concurrent sentence for another felony for which he or she was not wrongfully convicted during the period of wrongful incarceration.[21]

Additionally, under s. 961.06(2), F.S., a wrongfully incarcerated person who is placed on parole or community supervision as a part of the sentence he or she is serving for his or her wrongful conviction and who commits:
- One violent felony or more than one nonviolent felony that results in revocation of the parole or community supervision is ineligible for any compensation under the Act.
- No more than one nonviolent felony which results in revocation of the parole or community supervision is eligible for compensation for the total number of years he or she was incarcerated.[22]

For the purpose of determining a person's eligibility, s. 961.02(6), F.S., defines a violent felony as any felony listed in:
- Section 755.084(1)(c)1., F.S., which includes: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; home invasion robbery; carjacking; or an offense committed in another jurisdiction which has substantially similar elements to a listed crime; or
- Section 948.06(8)(c), F.S., which includes: kidnapping or attempted kidnapping, false imprisonment of a child under 13, or luring or enticing a child; murder or attempted murder, attempted felony murder, or manslaughter; aggravated battery or attempted aggravated battery; sexual battery or attempted sexual battery; lewd or lascivious battery or attempted lewd or lascivious battery; lewd or lascivious molestation, lewd or lascivious conduct, lewd or lascivious exhibition, or lewd or lascivious exhibition on a computer; robbery or attempted robbery, carjacking or attempted carjacking, or home invasion robbery or attempted home invasion robbery; lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person; sexual performance by a child or attempted sexual performance by a child; computer pornography, transmission of child pornography, or selling or buying of minors; poisoning food or water; abuse of a dead human body; any burglary offense or attempted burglary offense that is a first or second degree felony; arson or attempted arson; aggravated assault; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; treason under s. 876.32, F.S.; or any offense committed in another jurisdiction which would be a listed offense if it were committed in Florida.[23]

[21] Section. 961.04, F.S.
[22] Section 961.06(2), F.S.
[23] Section 961.02(6), F.S.

Currently, the Federal government, District of Columbia, and 38 states have a process to compensate wrongfully incarcerated individuals.[24] Florida's wrongful incarceration compensation law is the only one in the country that makes a person ineligible for compensation if he or she was previously convicted of certain unrelated crimes.[25] At least 17 exonerees in Florida are currently ineligible to receive compensation under the Act because of the "clean hands" requirement.[26]

The Application Process

After the original sentencing court enters an order finding that the claimant meets the definition of a wrongfully incarcerated person who is eligible for compensation, the claimant must submit an application to the DLA for compensation, if he or she is otherwise eligible to apply, within two years.[27] Section 961.06, F.S., prohibits a wrongfully incarcerated person from applying for compensation if he or she is the subject of a pending claim bill[28] which is based on his or her wrongful conviction and incarceration. Similarly, once a claimant files an application for compensation, he or she may not pursue recovery under a claim bill until the final disposition of his or her application,[29] and once the DLA notifies a claimant that his or her application meets the requirements of the Act, he or she is prohibited from seeking additional compensation under a claim bill.[30, 31]

Only the claimant, not the claimant's estate or its personal representative, may apply for compensation.[32] Section 961.05(3), F.S., requires, in part, that a claimant's application include:

- A certified copy of the order vacating the conviction and sentence;

[24] Alaska, Arizona, Arkansas, Delaware, Georgia, Kentucky, New Mexico, North Dakota, Pennsylvania, South Carolina, South Dakota, and Wyoming do not have compensation laws. Innocence Project, *Compensating the Wrongly Convicted* https://innocenceproject.org/compensating-wrongly-convicted/#:~:text=The%20federal%20government%2C%20the%20District,%2C%20South%20Dakota%2C%20and%20Wyoming. (last visited Feb. 3, 2023).

[25] Kansas Legislative Research Department, *Compensation for Wrongful Conviction, Wrongful Incarceration, and Exoneration* (Dec. 27, 2017) http://www.kslegresearch.org/KLRD-web/Publications/JudiciaryCorrectionsJuvJustice/WrongfulIncarcerationCompensationMemo.pdf (last visited on Feb. 3, 2023).

[26] According to the Innocence Project and independent research conducted at George Washington University Law School. Jeffrey Gutman, *supra* note 6.

[27] Section 961.05(1) and (2), F.S.

[28] A claim bill is not an action at law, but rather is a legislative measure that directs the CFO, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation. The amount awarded under a claim bill is based on the Legislature's concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable. *Wagner v. Orange Cty*., 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

[29] Section 961.06(6)(c), F.S.

[30] Any amount awarded under the Act is intended to provide the sole compensation for any and all present and future claims arising out of the facts in connection with the claimant's wrongful conviction and incarceration. Section 961.06(6)(d), F.S.

[31] Since 2008, numerous claim bills have been filed on behalf of wrongfully incarcerated persons who were ineligible for compensation under the Act because of the "clean hands" requirement. At least three such persons have received compensation for wrongful incarceration through the claim bill process: Alan Crotzer (2008), William Dillon (2017), and Clifford Williams (2020).

[32] Section 961.05(2), F.S.

- A certified copy of the original sentencing court's order finding the claimant to be a wrongfully incarcerated person who is eligible for compensation under the Act;
- Certified copies of the original judgment and sentence;
- Documentation demonstrating the length of the sentence served, including documentation from the Department of Corrections (DOC) regarding the person's admission into and release from the custody of the DOC;
- Proof of identification demonstrating that the person seeking compensation is the same individual who was wrongfully incarcerated;
- All supporting documentation of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; and
- All supporting documentation of any reasonable attorney's fees and expenses.

The DLA is required to review the application, and within 30 days, notify the claimant of any errors or omissions and request any additional information relevant to the review of the application. The claimant has 15 days after notification of existing errors or omissions to supplement the application. The DLA must process and review each completed application within 90 days.[33]

Before the DLA approves an application, the wrongfully incarcerated person must sign a release and waiver on behalf of himself or herself and his or her heirs, successors, and assigns, forever releasing the state or any agency, or any political subdivision thereof, from all present or future claims that may arise out of the facts in connection with the wrongful conviction for which compensation is being sought.[34] Once DLA determines whether a claim meets the Act's requirements, it must notify the claimant within five business days of its determination.[35] If DLA determines that a claimant meets the Act's requirements, the wrongfully incarcerated person becomes entitled to compensation.[36]

Compensation

Under s. 961.06, F.S., a wrongfully incarcerated person is entitled to:

- Monetary compensation, at a rate of $50,000 for each year of wrongful incarceration;
- A waiver of tuition and fees for up to 120 hours of instruction at a public career center, community college, or state university;
- A refund of fines, penalties, and court costs imposed and paid;
- Reasonable attorney's fees and expenses incurred and paid in connection with all criminal proceedings and appeals regarding the wrongful conviction; and
- Immediate administrative expunction of the person's criminal record resulting from the wrongful arrest, conviction, and incarceration.[37]

Within 15 calendar days after the DLA issues notice to the claimant that his or her claim satisfies all of the requirements under the Act, the DLA must notify the CFO to draw a warrant from the General Revenue Fund or another source designated by the Legislature in law for the purchase of

[33] Section 961.05(5), F.S.
[34] Section 961.06(5), F.S.
[35] Section 961.05(5), F.S.
[36] Section 961.05(6), F.S.
[37] Section 961.06(1), F.S.

an annuity for the claimant based on the total amount determined by the DLA.[38] Section 961.07, F.S., currently provides for a continuing appropriation from the General Revenue Fund to the CFO for payments under the Act.[39]

The total compensation awarded to a claimant may not exceed $2 million.[40] The CFO is required to issue payment in the amount determined by the DLA to an insurance company or other financial institution admitted and authorized to issue annuity contracts to purchase an annuity or annuities, selected by the claimant, for a term not less than 10 years to distribute such compensation.[41]

III. Effect of Proposed Changes:

The bill amends s. 961.02, F.S., to remove a definition that has become unnecessary due to other parts of the bill.

The bill amends s. 961.03, F.S., to prospectively extend the filing deadline for a petition under the Act from 90 days to within two years after an order vacating a conviction and sentence becomes final and the criminal charges against a person are dismissed or the person is retried and acquitted, if the person's conviction and sentence is vacated on or after July 1, 2023.

The bill also amends s. 961.03, F.S., to retroactively authorize a person to file a petition for determination of status as a wrongfully incarcerated person and determination of eligibility for compensation by July 1, 2025, if the:

- Person's conviction and sentence was vacated and the criminal charges against the person were dismissed, or the person was retried and acquitted, after January 1, 2006, but before July 1, 2023; and
- Person previously filed a petition that was dismissed or did not file a petition, because the:
  - Date when the criminal charges against the person were dismissed or the date the person was acquitted occurred more than 90 days after the date of the final order vacating his or her conviction and sentence; *or*
  - Person was convicted of an unrelated felony before or during his or her wrongful conviction and incarceration and was ineligible to receive compensation under s. 961.04, F.S., the "clean hands" requirement.

Additionally, the bill provides that a deceased person's heirs, successors, or assigns do not have standing to file a petition on the deceased person's behalf.

The bill amends s. 961.04, F.S., to remove the bar to compensation for a petitioner who has been convicted of a violent felony or multiple nonviolent felonies before or during his or her wrongful conviction and incarceration, thereby making such a person eligible to seek compensation under the Act. A person continues to be ineligible for compensation for any period of wrongful incarceration during which the person was serving a concurrent sentence for a felony offense for which he or she was not wrongfully incarcerated.

[38] Section 961.06(3), F.S.
[39] Section 961.06(1), F.S.
[40] *Id*.
[41] Section 961.06(4), F.S.

The bill amends s. 961.06, F.S., to remove the provision stating that a person who is on parole or community supervision from the wrongful incarceration and commits a violent felony or more than one felony that results in the revocation of parole or community supervision is ineligible for any compensation.

The bill amends s. 961.06, F.S., to prohibit the CFO from drawing a warrant to purchase an annuity to pay a claimant for his or her wrongful incarceration if the claimant is currently incarcerated:

- For a felony conviction other than the crime for which the compensation is owed; or
- Due to the revocation of parole or probation for a felony conviction other than a crime for which the compensation is owed.

The CFO must commence with the drawing of a warrant after such term of imprisonment has concluded.

The bill also amends s. 961.07, F.S., to provide that beginning in fiscal year 2023-2024, and continuing each fiscal year thereafter, a sum sufficient to pay the approved payments under s. 961.03(1)(b), F.S.,[42] is appropriated from the General Revenue Fund to the Chief Financial Officer, which sum is further appropriated for expenditure pursuant to the Victims of Wrongful Incarceration Act. Petitions filed pursuant to s. 961.03(1)(b)2., F.S.,[43] are subject to specific appropriation.

The bill becomes effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[42] Subparagraph 961.03(1)(b)1., F.S., extends the time for filing a petition to within two years after an order vacating a conviction and sentence becomes final and the criminal charges against a person are dismissed or the person is retried and acquitted, if the person's conviction and sentence is vacated on or after July 1, 2023.

[43] Subparagraph s. 961.03(1)(b)2., F.S., extends the time for filing a petition to July 1, 2025, if the:

- Person's conviction and sentence was vacated and the criminal charges against the person were dismissed, or the person was retried and acquitted, after January 1, 2006, but before July 1, 2023; *and*
- Person previously filed a petition that was dismissed or did not file a petition, because the:
  - Date when the criminal charges against the person were dismissed or the date the person was acquitted occurred more than 90 days after the date of the final order vacating his or her conviction and sentence; *or*
  - Person was convicted of an unrelated felony before or during his or her wrongful conviction and incarceration and was ineligible to receive compensation under s. 961.04, F.S., the "clean hands" requirement (emphasis added).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 961.07, F.S., currently provides for the continuing appropriation from the General Revenue Fund to the CFO for payments under the Act. The limitation on a wrongful incarceration claim is $50,000 per year of wrongful incarceration, up to a limit of $2 million. The bill extends the timelines and expands the parameters for filing wrongful incarceration claims, which may increase the number of persons who qualify for wrongful compensation under the Act. It is not possible to quantify the additional number of people who may become compensable. Therefore, the fiscal impact of the bill is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.03, 961.04, 961.06, and 961.07.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 6, 2023:
The committee substitute:

- Amends s. 961.02, F.S., to remove a definition that has become unnecessary due to other parts of the bill.
- Restores current law in s. 961.04, F.S., providing that a person is ineligible for compensation for any period of wrongful incarceration during which the person was serving a concurrent sentence for a felony offense for which he or she was lawfully incarcerated.
- Removes the provisions in s. 961.06, F.S., relating to an "off-set provision" if the defendant receives a civil award, a settlement, and funds from a source other than the Act.
- Restores current law in s. 961.06, F.S., relating to the wrongfully incarcerated person signing a release and waiver releasing the state and other entities from all present and future claims.
- Restores current law in s. 961.06, F.S., prohibiting a wrongfully incarcerated person from filing an application under the Act if he or she has a pending lawsuit against the state and other entities in state court.
- Restores current law in s. 961.06, F.S., regarding compensation awarded to the wrongfully incarcerated person from a claim bill.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Bradley

591-02317-23 2023382c1

A bill to be entitled

An act relating to compensation for wrongfully incarcerated persons; amending s. 961.02, F.S.; deleting an obsolete definition; amending s. 961.03, F.S.; revising requirements for when a petition seeking compensation must be filed; providing that a deceased person's heirs, successors, or assigns do not have standing to file such a petition; amending s. 961.04, F.S.; revising compensation eligibility requirements; amending s. 961.06, F.S.; revising requirements for awarding compensation; amending s. 961.07, F.S.; revising requirements for continuing appropriations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 961.02, Florida Statutes, is amended to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

~~(6) "Violent felony" means a felony listed in s. 775.084(1)(c)1. or s. 948.06(8)(c).~~

Section 2. Paragraph (b) of subsection (1) of section 961.03, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

961.03 Determination of status as a wrongfully incarcerated person; determination of eligibility for compensation.—

(1)

(b) The person must file the petition with the court:

1. Within 2 years ~~90 days~~ after the order vacating a

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conviction and sentence becomes final and the criminal charges against the person are dismissed or the person is retried and acquitted if the person's conviction and sentence is vacated on or after July 1, 2023 ~~2008~~.

2. By July 1, 2025 ~~2010~~, if the person's conviction and sentence was vacated and the criminal charges against the person were dismissed or the person was retried and acquitted on or after January 1, 2006, but before July 1, 2023, and he or she previously filed a petition under this section that was dismissed or he or she did not file a petition under this section because:

a. The date on which the criminal charges against the person were dismissed or the date on which the person was acquitted upon retrial occurred more than 90 days after the date of the final order vacating the conviction and sentence; or

b. The person was convicted of an unrelated felony before or during his or her wrongful conviction and incarceration and was ineligible for compensation under s. 961.04 as it existed before July 1, 2023.

(c) A deceased person's heirs, successors, or assigns do not have standing to file a petition on the deceased person's behalf under this section ~~by an order that became final prior to July 1, 2008~~.

Section 3. Section 961.04, Florida Statutes, is amended to read:

961.04 Eligibility for compensation for wrongful incarceration.—A wrongfully incarcerated person is not eligible for compensation under the act for any period of incarceration during which the person was concurrently serving a sentence for

a conviction of another felony for which such person was lawfully incarcerated ~~if:~~

~~(1) Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any violent felony, or a crime committed in another jurisdiction the elements of which would constitute a violent felony in this state, or a crime committed against the United States which is designated a violent felony, excluding any delinquency disposition;~~

~~(2) Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, more than one felony that is not a violent felony, or more than one crime committed in another jurisdiction, the elements of which would constitute a felony in this state, or more than one crime committed against the United States which is designated a felony, excluding any delinquency disposition;~~

~~(3) During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any violent felony;~~

~~(4) During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, more than one felony that is not a violent felony; or~~

~~(5) During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted~~.

Section 4. Section 961.06, Florida Statutes, is amended to

read:

961.06 Compensation for wrongful incarceration.—

(1) Except as otherwise provided in this act and subject to the limitations and procedures prescribed in this section, a person who is found to be entitled to compensation under ~~the provisions of~~ this act is entitled to all of the following:

(a) Monetary compensation for wrongful incarceration, which shall be calculated at a rate of $50,000 for each year of wrongful incarceration, prorated as necessary to account for a portion of a year. For persons found to be wrongfully incarcerated after December 31, 2005 ~~2008~~, the Chief Financial Officer may adjust the annual rate of compensation for inflation using the change in the December-to-December "Consumer Price Index for All Urban Consumers" of the Bureau of Labor Statistics of the Department of Labor.~~;~~

(b) A waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, any Florida College System institution as defined in s. 1000.21(3), or any state university as defined in s. 1000.21(6)~~,~~ if the wrongfully incarcerated person meets and maintains the regular admission requirements of such career center, Florida College System institution, or state university; remains registered at such educational institution; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled.~~;~~

(c) The amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person.~~;~~

(d) The amount of any reasonable attorney ~~attorney's~~ fees and expenses incurred and paid by the wrongfully incarcerated

person in connection with all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon the supporting documentation submitted as specified in s. 961.05.~~;and~~

(e) Notwithstanding any provision to the contrary in s. 943.0583 or s. 943.0585, immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. The Department of Legal Affairs and the Department of Law Enforcement shall, upon a determination that a claimant is entitled to compensation, immediately take all action necessary to administratively expunge the claimant's criminal record arising from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. All fees for this process shall be waived.

The total compensation awarded under paragraphs (a), (c), and (d) may not exceed $2 million. No further award for attorney ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses shall be made by the state.

~~(2) In calculating monetary compensation under paragraph (1)(a), a wrongfully incarcerated person who is placed on parole or community supervision while serving the sentence resulting from the wrongful conviction and who commits no more than one felony that is not a violent felony which results in revocation of the parole or community supervision is eligible for compensation for the total number of years incarcerated. A wrongfully incarcerated person who commits one violent felony or more than one felony that is not a violent felony that results~~

~~in revocation of the parole or community supervision is ineligible for any compensation under subsection (1).~~

(2)~~(3)~~ Except as provided in subsection (4), within 15 calendar days after issuing notice to the claimant that his or her claim satisfies all of the requirements under this act, the department shall notify the Chief Financial Officer to draw a warrant from the General Revenue Fund or another source designated by the Legislature in law for the purchase of an annuity for the claimant based on the total amount determined by the department under this act.

(3)~~(4)~~ The Chief Financial Officer shall issue payment in the amount determined by the department to an insurance company or other financial institution admitted and authorized to issue annuity contracts in this state to purchase an annuity or annuities, selected by the wrongfully incarcerated person, for a term of not less than 10 years. The Chief Financial Officer is directed to execute all necessary agreements to implement this act and to maximize the benefit to the wrongfully incarcerated person. The terms of the annuity or annuities shall:

(a) Provide that the annuity or annuities may not be sold, discounted, or used as security for a loan or mortgage by the wrongfully incarcerated person.

(b) Contain beneficiary provisions for the continued disbursement of the annuity or annuities in the event of the death of the wrongfully incarcerated person.

(4)(a) The Chief Financial Officer may not draw a warrant to purchase an annuity for a claimant who is currently incarcerated:

1. In a county, city, or federal jail or other correctional

facility or an institution operated by the Department of Corrections for a felony conviction other than a crime for which the claimant was wrongfully convicted; or

2. Due to the revocation of parole or probation for a felony conviction other than a crime for which the claimant was wrongfully convicted.

(b) After a term of incarceration described in subparagraph (a)1. or subparagraph (a)2. has concluded, the Chief Financial Officer shall commence with the drawing of a warrant as described in this section.

(5) Before the department approves the application for compensation, the wrongfully incarcerated person must sign a release and waiver on behalf of the wrongfully incarcerated person and his or her heirs, successors, and assigns, forever releasing the state or any agency, instrumentality, or any political subdivision thereof, or any other entity subject to s. 768.28, from all present or future claims that the wrongfully incarcerated person or his or her heirs, successors, or assigns may have against such entities arising out of the facts in connection with the wrongful conviction for which compensation is being sought under the act.

(6)(a) A wrongfully incarcerated person may not submit an application for compensation under this act if the person has a lawsuit pending against the state or any agency, instrumentality, or any political subdivision thereof, or any other entity subject to the provisions of s. 768.28, in state or federal court requesting compensation arising out of the facts in connection with the claimant's conviction and incarceration.

(b) A wrongfully incarcerated person may not submit an

application for compensation under this act if the person is the subject of a claim bill pending for claims arising out of the facts in connection with the claimant's conviction and incarceration.

(c) Once an application is filed under this act, a wrongfully incarcerated person may not pursue recovery under a claim bill until the final disposition of the application.

(d) Any amount awarded under this act is intended to provide the sole compensation for any and all present and future claims arising out of the facts in connection with the claimant's conviction and incarceration. Upon notification by the department that an application meets the requirements of this act, a wrongfully incarcerated person may not recover under a claim bill.

(e) Any compensation awarded under a claim bill shall be the sole redress for claims arising out of the facts in connection with the claimant's conviction and incarceration and, upon any award of compensation to a wrongfully incarcerated person under a claim bill, the person may not receive compensation under this act.

(7) Any payment made under this act does not constitute a waiver of any defense of sovereign immunity or an increase in the limits of liability on behalf of the state or any person subject to ~~the provisions of~~ s. 768.28 or any other law.

Section 5. Section 961.07, Florida Statutes, is amended to read:

961.07 Continuing appropriation.—Beginning in the 2023-2024 ~~2008-2009~~ fiscal year and continuing each fiscal year thereafter, a sum sufficient to pay the approved payments under

s. 961.03(1)(b) ~~this act~~ is appropriated from the General Revenue Fund to the Chief Financial Officer, which sum is further appropriated for expenditure pursuant to ~~the provisions of~~ this act.

Section 6. This act shall take effect July 1, 2023.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	SB 736
INTRODUCER:	Senator Brodeur
SUBJECT:	Controlled Substances
DATE:	March 22, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Stokes	CJ	**Favorable**
2.	Erickson	Yeatman	FP	**Pre-Meeting**

I. Summary:

SB 736 adds nitazene derivatives ("nitazenes"), which are synthetic opioids, to the list of Schedule I controlled substances. Many of these nitazenes are currently Schedule 1 controlled substances pursuant to emergency rule of the Florida Attorney General. The bill will codify this scheduling. There is a Schedule I scheduling exception for any listed nitazene that is specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration.

The Legislature's Office of Economic and Demographic Research preliminary estimates that the House companion bill (HB 1135), which is similar to SB 736, will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Florida Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the "potential for abuse"[1] of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

[1] Section 893.035(3)(a), F.S., defines "potential for abuse" as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

Controlled Substance Offenses Under ss. 893.135 and 893.135, F.S.

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance.[2] The penalty for violating s. 893.13, F.S., generally depends on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred.

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances, and the controlled substances involved in the trafficking must meet a specified weight or quantity threshold.

Emergency Rule Scheduling of Nitazenes

On April 26, 2022, Florida Attorney General Ashley Moody ("AG") adopted an emergency rule scheduling[3] the following nitazenes, which are synthetic opioids, as Schedule I controlled Substances:

- Butonitazene;
- Etodesnitazene/etazene;

[2] *See e.g.*, s. 893.13(1)(a) and (b) and (6), F.S.

[3] The Attorney General has emergency rulemaking authority to add a substance to a controlled substance schedule established under s. 893.03, F.S., if she finds that it has the potential for abuse and she makes with respect to it the other findings appropriate for classification in the particular schedule under s. 893.03, F.S. Section 893.035(2)(a) and (5)-(8), F.S. The Attorney General must report to the Legislature by March 1 of each year concerning rules adopted under s. 893.035, F.S., during the previous year, and each rule so reported expires the following June 30 unless the Legislature adopts the provisions thereof as an amendment to ch. 893, F.S. Section 893.035(10), F.S.

- Flunitazene;
- Metodesnitazene;
- Metonitazene;
- N-Pyrrolidino Etonitazene/etonitazephyne;
- Protonitazene;
- Isotodesnitazene; and
- Isotonitazene.[4]

AG findings in support of the emergency scheduling include the following information:

- "Nitazenes are within a category of synthetic opioids in the benzimidazole-opiod class" that were developed in Swiss research labs in the 1950's as analgesics but the research did not lead to an accepted medical use anywhere in the world.
- The chemical structure of the listed nitazenes is dissimilar to any currently scheduled substance in Schedule I under s. 893.03, F.S.
- Many of the listed nitazenes have emerged in the illicit drug market and are easily available in that market. It is believed they are primarily produced in China and shipped to the United States through common mail carrier.
- Nitazenes have been primarily found in liquid form, or brown, white, or gray powders, though they are often mixed with other opioids, including fentanyl.
- The Florida Department of Law Enforcement and the U.S. Drug Enforcement Administration (DEA) have found the listed nitazenes have a high potential for abuse and no currently accepted medical use in the United States. Several of the listed nitazenes are more potent than fentanyl and morphine.
- Severe side effects include respiratory depression, loss of consciousness, and death.
- The AG identified 268 nitrazene cases in Florida since 2020 and suspects there are more cases than reported.
- The medical examiner reported five confirmed deaths related to N-Pyrrolidino Etonitazene/etonitazephyne in Pinellas/Pacso counties since 2021, and three other suspected cases.
- Isotonitazene has been linked to at least 10 deaths in Florida since 2020, according to the Florida Medical Examiners Commission.
- Isotonitazene is classified as a Schedule I controlled substance under federal law, and, effective January 5, 2022, several of the listed nitazenes were temporarily placed in Schedule I by the DEA.[5]

III. Effect of Proposed Changes:

The bill adds several nitazene derivatives, which are synthetic opioids, to the list of Schedule I controlled substances, unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration.

[4] Adoption text for Emergency Rule 2ER22-1, Department of Legal Affairs, available at http://myfloridalegal.com/webfiles.nsf/WF/CPAL-CDUPT2/$file/Web+Link.pdf (last visited on March 6, 2023).
[5] *Findings of the Attorney General in Support of Emergency Rule 2ER22-1*, Department of Legal Affairs, available at http://myfloridalegal.com/webfiles.nsf/WF/CPAL-CDUPT2/$file/Web+Link.pdf (last visited on March 6, 2023).

The nitazene derivatives include any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a benzimidazole ring with an ethylamine1 substitution at the 1-position and a benzyl ring substitution at the 2-position structure:

- With or without substitution on the benzimidazole ring with alkyl, alkoxy, carboalkoxy, amino, nitro, or aryl groups, or halogens;
- With or without substitution at the ethylamine amino moiety with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system;
- With or without inclusion of the ethylamine amino moiety in a cyclic structure;
- With or without substitution of the benzyl ring; or
- With or without replacement of the benzyl ring with an aromatic ring, including, but not limited to:
  - Butonitazene.
  - Clonitazene.
  - Etodesnitazene.
  - Etonitazene.
  - Flunitazene.
  - Isotodesnitazene.
  - Isotonitazene.
  - Metodesnitazene.
  - Metonitazene.
  - Nitazene.
  - N-Desethyl Etonitazene.
  - N-Desethyl Isotonitazene.
  - N-Piperidino Etonitazene.
  - N-Pyrrolidino Etonitazene.
  - Protonitazene.

Many of these nitazene derivatives are currently Schedule 1 controlled substances pursuant to emergency rule scheduling of the Florida Attorney General.[6]

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

[6] *See* "Present Situation" section of this analysis.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimates that the House companion bill, (HB 1135), which is similar to SB 736, will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).[7]

The EDR provided the following information relevant to its estimate:

> Per [Department of Corrections], in FY 18-19, there were 1,689 new commitments to prison for the Schedule I drug offense category where nitazene derivatives will be included, and in FY 19-20, there were 931 new commitments. In FY 20-21, there were 779 new commitments, and there were 1,016 new commitments in FY 21-22. This drug offense category contains various kinds of drugs, so it is not possible to see how each drug contributes to the total number of new commitments. It is also not known how the addition of nitazene derivatives will impact the prison population. Furthermore, it is possible that the new commitments in the latter half of FY 21-22 have already been impacted by the Attorney General temporarily adding nitazene derivatives to Schedule I controlled substances in April of 2022.[8]

[7] *HB 1135 – Nitazene Derivatives (Similar SB 736),* Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).
[8] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

893.03
This bill substantially amends section 893.03 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Brodeur

10-00876-23 2023736__

A bill to be entitled

An act relating to controlled substances; amending s. 893.03, F.S.; adding nitazene derivatives to the list of Schedule I controlled substances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including

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their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl.
2. Acetylmethadol.
3. Allylprodine.
4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
5. Alphamethadol.
6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).
7. Alpha-methylthiofentanyl.
8. Alphameprodine.
9. Benzethidine.
10. Benzylfentanyl.
11. Betacetylmethadol.
12. Beta-hydroxyfentanyl.
13. Beta-hydroxy-3-methylfentanyl.
14. Betameprodine.
15. Betamethadol.
16. Betaprodine.
17. Clonitazene.
18. Dextromoramide.
19. Diampromide.
20. Diethylthiambutene.
21. Difenoxin.

22. Dimenoxadol.
23. Dimepheptanol.
24. Dimethylthiambutene.
25. Dioxaphetyl butyrate.
26. Dipipanone.
27. Ethylmethylthiambutene.
28. Etonitazene.
29. Etoxeridine.
30. Flunitrazepam.
31. Furethidine.
32. Hydroxypethidine.
33. Ketobemidone.
34. Levomoramide.
35. Levophenacylmorphan.
36. Desmethylprodine (1-Methyl-4-Phenyl-4-Propionoxypiperidine).
37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
38. 3-Methylthiofentanyl.
39. Morpheridine.
40. Noracymethadol.
41. Norlevorphanol.
42. Normethadone.
43. Norpipanone.
44. Para-Fluorofentanyl.
45. Phenadoxone.
46. Phenampromide.
47. Phenomorphan.
48. Phenoperidine.

49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine).
50. Piritramide.
51. Proheptazine.
52. Properidine.
53. Propiram.
54. Racemoramide.
55. Thenylfentanyl.
56. Thiofentanyl.
57. Tilidine.
58. Trimeperidine.
59. Acetylfentanyl.
60. Butyrylfentanyl.
61. Beta-Hydroxythiofentanyl.
62. Fentanyl derivatives. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a 4-anilidopiperidine structure:
a. With or without substitution at the carbonyl of the aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl, methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl, dihydrofuranyl, benzyl moiety, or rings containing heteroatoms sulfur, oxygen, or nitrogen;
b. With or without substitution at the piperidine amino moiety with a phenethyl, benzyl, alkylaryl (including

heteroaromatics), alkyltetrazolyl ring, or an alkyl or carbomethoxy group, whether or not further substituted in the ring or group;

c. With or without substitution or addition to the piperdine ring to any extent with one or more methyl, carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester groups;

d. With or without substitution of one or more hydrogen atoms for halogens, or methyl, alkyl, or methoxy groups, in the aromatic ring of the anilide moiety;

e. With or without substitution at the alpha or beta position of the piperidine ring with alkyl, hydroxyl, or methoxy groups;

f. With or without substitution of the benzene ring of the anilide moiety for an aromatic heterocycle; and

g. With or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring;

excluding, Alfentanil, Carfentanil, Fentanyl, and Sufentanil; including, but not limited to:

(I) Acetyl-alpha-methylfentanyl.

(II) Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

(III) Alpha-methylthiofentanyl.

(IV) Benzylfentanyl.

(V) Beta-hydroxyfentanyl.

(VI) Beta-hydroxy-3-methylfentanyl.

(VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-

piperidyl]-N-phenylpropanamide).

(VIII) 3-Methylthiofentanyl.

(IX) Para-Fluorofentanyl.

(X) Thenylfentanyl or Thienyl fentanyl.

(XI) Thiofentanyl.

(XII) Acetylfentanyl.

(XIII) Butyrylfentanyl.

(XIV) Beta-Hydroxythiofentanyl.

(XV) Lofentanil.

(XVI) Ocfentanil.

(XVII) Ohmfentanyl.

(XVIII) Benzodioxolefentanyl.

(XIX) Furanyl fentanyl.

(XX) Pentanoyl fentanyl.

(XXI) Cyclopentyl fentanyl.

(XXII) Isobutyryl fentanyl.

(XXIII) Remifentanil.

63. Nitazene derivatives. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a benzimidazole ring with an ethylamine substitution at the 1-position and a benzyl ring substitution at the 2-position structure:

a. With or without substitution on the benzimidazole ring with alkyl, alkoxy, carboalkoxy, amino, nitro, or aryl groups,

or halogens;

b. With or without substitution at the ethylamine amino moiety with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system;

c. With or without inclusion of the ethylamine amino moiety in a cyclic structure;

d. With or without substitution of the benzyl ring; or

e. With or without replacement of the benzyl ring with an aromatic ring, including, but not limited to:

(I) Butonitazene.

(II) Clonitazene.

(III) Etodesnitazene.

(IV) Etonitazene.

(V) Flunitazene.

(VI) Isotodesnitazene.

(VII) Isotonitazene.

(VIII) Metodesnitazene.

(IX) Metonitazene.

(X) Nitazene.

(XI) N-Desethyl Etonitazene.

(XII) N-Desethyl Isotonitazene.

(XIII) N-Piperidino Etonitazene.

(XIV) N-Pyrrolidino Etonitazene.

(XV) Protonitazene.

Section 2. This act shall take effect July 1, 2023.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	SB 1416
INTRODUCER:	Senator Gruters
SUBJECT:	Dissolution of Marriage
DATE:	March 22, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Yeatman	FP	**Pre-meeting**
2.			RC	

I. Summary:

SB 1416 amends laws related to dissolution of marriage. Changes to alimony applicable to any final judgment entered on or after July 1, 2023 include:

- Permanent (lifetime) alimony is eliminated, leaving bridge-the-gap, rehabilitative, and durational forms of alimony.
- Rehabilitative alimony is limited to 5 years.
- Durational alimony may not be awarded for a marriage of less than 3 years. The term of an award is limited based on the duration of the marriage, with certain exceptions, and may not exceed the lesser of the obligee's reasonable need or 35 percent of the difference between the parties' net incomes.
- A court must make specific written findings if it requires an obligor to purchase life insurance to secure the award of alimony.
- A court must reduce or terminate an award of alimony if it makes specific written findings that a supportive relationship exists. The bill places the burden on the obligor to prove by a preponderance of the evidence that such a relationship exists. Once proven, the burden shifts to the obligee to prove by a preponderance of the evidence the court should not reduce or terminate alimony.

Current case law allows for modification or termination of alimony upon "reasonable retirement," a loosely-defined court-created concept. The bill codifies standards and procedures related to retirement of a party in a dissolution of marriage case. If the obligor seeks to retire, the obligor may apply for modification of the alimony award no sooner than 6 months prior to the planned retirement. The bill provides a number of factors the court must consider in determining whether to modify or terminate alimony.

The bill provides that a parent moving to a residence within 50 miles of the primary residence of a child is a substantial change in circumstances. For a modification of parenting plan and time-sharing schedule, the bill eliminates a requirement that a party shows that a change in circumstance was unanticipated.

The bill will have no fiscal impact on state government.

The bill is effective July 1, 2023, and the provisions related to an award of alimony apply to all initial petitions for dissolution of marriage or support unconnected with dissolution of marriage pending or filed on or after July 1, 2023.

II. Present Situation:

Alimony

Alimony is a court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced.[1] Alimony may be agreed to by the parties or awarded by the court after an evidentiary hearing.

Calculation of the Amount of Alimony

There is no fixed formula for alimony. Alimony is based on both financial need and the ability to pay.[2] After making an initial determination to award alimony, the court must consider ten factors in determining the amount of alimony:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.[3]

The court may also consider adultery by either spouse in a decision to award alimony.[4] That consideration is dependent upon the circumstances of each particular case. Absent a showing of a related depletion of marital assets, a party's adulterous misconduct is not a valid reason to award a greater share of those marital assets to the innocent spouse or to deny the adulterous spouse alimony. Furthermore, despite evidence of adultery, need and ability to pay remain the primary considerations in awarding alimony.[5]

[1] Alimony, BLACK'S LAW DICTIONARY (11th ed. 2019).
[2] Section 61.08(2), F.S.
[3] Section 61.08(2)(a)-(j), F.S.
[4] Section 61.08(1), F.S.
[5] *Williamson v. Williamson*, 367 So. 2d 1016, 1019 (Fla.1979); *Noah v. Noah*, 491 So. 2d 1124, 1127 (Fla. 1986); *Keyser v. Keyser*, 204 So. 3d 159, 161 (Fla. 1st DCA 2016).

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.[6] A court making the requirement must first make specific findings regarding the availability and cost of insurance, the obligor's ability to pay, and the special circumstances that warrant the requirement for security of the obligation.[7] The special circumstances required to support an order mandating life insurance include "a spouse potentially left in dire financial straits after the death of the obligor spouse due to age, ill health and/or lack of employment skills, obligor spouse in poor health, minors living at home, supported spouse with limited earning capacity, obligor spouse in arrears on support obligations, and cases where the obligor spouse agreed on the record to secure an award with a life insurance policy."[8]

An award of alimony may not result in the obligor with significantly less net income than the net income of the obligee absent exceptional circumstances.[9] What qualifies as exceptional circumstances is undefined.

Types of Alimony

For purposes of determining the appropriate type of alimony to award, marriages are classified by term or length of marriage, based on the time from the date of marriage to the date the dissolution of marriage action is filed:

- Short-term means less than 7 years.
- Moderate-term means greater than 7 years but less than 17 years.
- Long-term means greater than 17 years.[10]

The length of the marriage does not include time spent cohabitating prior to marriage.[11]

Florida law recognizes four forms of alimony: bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.[12]

Bridge-the-gap alimony:[13]

- Is designed to assist a party in his or her transition from being married to being single.
- May be awarded in a marriage of any term.
- Cannot exceed 2 years in duration.
- May not be modified.
- Terminates upon death or remarriage.

[6] Section 61.08(3), F.S.
[7] *O'Neill v. O'Neill*, 305 So. 3d 551, 554 (Fla. 4th DCA 2020).
[8] *Kotlarz v. Kotlarz*, 21 So. 3d 892, 893 (Fla. 1st DCA 2009).
[9] Section 61.08(9), F.S.; *Rabadan v. Rabadan*, 322 So. 3d 660 (Fla. 4th DCA 2021).
[10] Section 61.08(4), F.S. This triad was first enacted in 2010. Ch. 2010-199, Laws of Fla.
[11] *Taylor v. Davis*, 324 So. 3d 570 (Fla. 1st DCA 2021) (couple cohabitated for 24 years prior to 3 year marriage, court denied an award of permanent alimony because it was a short-term marriage).
[12] Section 61.08(1), F.S.
[13] Section 61.08(5), F.S.

Rehabilitative alimony:[14]

- Is designed to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.
- May be awarded in a marriage of any term.
- Can be of any duration.
- May be modified based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.
- Does not automatically terminate upon remarriage.

Durational alimony:[15]

- Is designed to provide a party with economic assistance for a set period of time.
- May be awarded following a marriage of short or moderate duration, or following a marriage of long duration if there is no ongoing need for support on a permanent basis.
- May not exceed the length of the marriage.
- May be modified as to amount, based upon a substantial change in circumstances; but the length may not be modified except under exceptional circumstances.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Permanent alimony:[16]

- Is designed to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.
- May be awarded only after a finding that no other form of alimony is fair and reasonable under the circumstances of the parties, following a marriage of:
  - Long duration, if such an award is appropriate upon consideration of the ten factors by a preponderance of the evidence;
  - Moderate duration, if such an award is appropriate based upon clear and convincing evidence after consideration of the 10 factors; or
  - Short duration, if there are written findings of exceptional circumstances.
- Is not for a fixed period of time.
- May be modified or terminated based upon a substantial change in circumstances, including retirement of the obligor or upon the existence of a supportive relationship benefiting the obligee.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

[14] Section 61.08(6), F.S.
[15] Section 61.08(7), F.S.
[16] Section 61.08(8), F.S.

Modification or Termination of Alimony - In General

Where allowed, either party may seek modification (up to termination) of an alimony award on the grounds of a substantial change in circumstances.[17] To obtain a modification of alimony, the party seeking modification must allege, and the trial court must find, that:

- There has been a substantial change in circumstances.
- The change was not contemplated at the time of the final judgment of dissolution.
- The change is sufficient, material, permanent, and involuntary.[18]

The mere existence of a substantial change in circumstances does not automatically lead to a modification or termination of alimony, it merely opens up the question of the appropriate amount of alimony based on the new situation and on the normal equitable factors, namely need and ability to pay. The court may modify support retroactively to the date of the filing of the motion.[19] If the parties to a dissolution of marriage settled the case and have designated alimony as non-modifiable in the marital settlement agreement, the court may not thereafter modify the alimony.[20]

Modification Based on a Supportive Relationship

To avoid termination of an alimony award because of remarriage, it was once common for an obligee former spouse to simply "live with" someone else in a committed but non-marital arrangement. Today, the existence of a supportive relationship between the obligee and a third party may be a substantial change in circumstances that warrants a modification (up to termination) of alimony. To modify alimony on an assertion of cohabitation between the obligee and a third party, the court must find:

- The existence of a supportive relationship between the obligee and a third party; and
- That the obligee lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.[21]

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.[22]

[17] Section 61.14(1)(a), F.S

[18] *Golson v. Golson*, 207 So. 3d 321, 325 (Fla. 5th DCA 2016); *Tanner v. Tanner*, 2021 WL 4877772 (Fla. 2nd DCA 2021).

[19] Section 61.14(1)(a), F.S.

[20] *Dills v. Perez*, 330 So.3d 989, 990 (Fla. 5th DCA 2021) ("[P]arties to a marital dissolution are free to enter into contractual agreements that include provisions no court of law could impose.").

[21] Section 61.14(b), F.S.

[22] Section 61.14(1)(b)1., F.S.

Modification of Alimony Based on Retirement

Retirement of a party in a pending dissolution of marriage case falls within the "need and ability to pay" framework. Voluntary retirement may qualify as a substantial change in circumstances which warrants a modification or termination of an existing alimony award. It is an exception to the general rule that a substantial change in circumstances must result from an involuntary action.

Retirement, whether related to an initial award of alimony or as a substantial change in circumstances for modification, is not addressed in statute. In deciding whether to modify or terminate alimony based on retirement of the obligor, the courts look to whether the retirement is reasonable. There are no fixed standards for reasonable. The leading case in this area ruled:

> In determining whether a voluntary retirement is reasonable, the court must consider the payor's age, health, and motivation for retirement, as well as the type of work the payor performs and the age at which others engaged in that line of work normally retire. . . . [A] payor spouse should not be permitted to unilaterally choose voluntary retirement if this choice places the receiving spouse in peril of poverty. Thus, the court should consider the needs of the receiving spouse and the impact a termination or reduction of alimony would have on him or her. In assessing those needs, the court should consider any assets which the receiving spouse has accumulated or received since the final judgment as well as any income generated by those assets.[23]

Social Security Retirement Age

The original Social Security Act of 1935 set the age for receiving full retirement benefits at 65.[24] Citing improvements in the health of older people and increases in average life expectancy as primary reasons for increasing the normal retirement age, Congress has increased the age for full retirement. On the effective date of this bill, the full retirement age for Social Security purposes will be 66 years and 6 months of age. It will increase gradually in the future until it reaches 67 years of age on January 1, 2027.[25]

The minimum age for claiming Social Security retirement benefits is 62. Benefits are reduced when a person elects to take early benefits.[26] The act increasing the age for full benefits did not change the minimum age for claiming benefits.

Timesharing with Minor Children

Determination of a time-sharing schedule for minor children is of vital importance to the children and their parents. Time-sharing also affects the calculation of child support.

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[23] *Pimm v. Pimm*, 601 So. 2d 534, 537 (Fla. 1992).
[24] U.S. Social Security Administration, *Social Security Fact Sheet: Increase in Retirement Age*, https://www.ssa.gov/pressoffice/IncRetAge.html (last viewed Mar. 18, 2023).
[25] U.S. Social Security Administration, *Retirement Benefits*, https://www.ssa.gov/benefits/retirement/planner/agereduction.html (last viewed Mar. 18, 2023).
[26] *Id*.

Timesharing - In General

The public policy of the state is for each minor child to have "frequent and continuing contact with both parents."[27] Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.[28] In setting a time-sharing award, there is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.[29] In determining time-sharing with each parent, a court must consider the best interests of the child based on statutory factors, namely:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child's school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.[30]

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.[31]

[27] Section 61.13(2)(c)1., F.S.
[28] Section 61.13 (2)(c)2., F.S.
[29] Section 61.13(2)(c)1., F.S.
[30] Section 61.13(3), F.S.
[31] Section 61.13(3)(t), F.S.

Modification of a Timesharing Award

Times change and circumstances change. Just like alimony, timesharing with a minor child is subject to future modification by the court. Either party to a final judgment of dissolution or final order regarding timesharing and child support may seek modification of the timesharing or child support award on the grounds of a substantial change in circumstances.[32] The party seeking modification of a timesharing order must allege, and the trial court must find, that:

- Circumstances have substantially and materially changed since the original custody determination;
- The change was not reasonably contemplated by the parties; and
- The child's best interests justify changing custody.[33]

The court may modify support retroactively to the date of the filing of the motion.[34] Unlike alimony, timesharing is always modifiable while the child is a minor and the parties may not enter into an agreement that prohibits modification in the future.

III. Effect of Proposed Changes:

Alimony

Forms of Alimony

The bill eliminates permanent alimony as a form of alimony that a court may award. The bill also changes the statutory directions regarding the creation of a family law handbook to remove a reference to permanent alimony.

Criteria for an Award of Alimony

The bill also authorizes the court to consider the adultery of either spouse, and any resulting economic impact that resulted from the adultery when determining the amount of alimony.

The bill requires the court to make written findings of fact regarding the basis for awarding the form and length of alimony, and must similarly make written findings why there is a lack of need or lack of ability to pay alimony. A court may award a combination of forms and payments necessary to provide greater economic assistance in order to allow the obligee to achieve self-support. The party seeking alimony has the burden of proving his or her need and the other party's ability to pay.

The bill amends the factors for consideration in determining the amount of an award of alimony as follows:

- In addition to considering the standard of living established during the marriage, the court must also consider the anticipated needs and necessities of life of each party after the final judgment.
- The mental condition of each party must be considered in addition to each party's age, physical and emotional condition, and whether either party is physically or mentally disabled.

[32] Section 61.14(1)(a), F.S.
[33] *Korkmaz v. Korkmaz*, 200 So. 3d 263, 265 (Fla. Dist. Ct. App. 2016)
[34] Section 61.14(1)(a), F.S.

In regard to the disability, the court must consider if the resulting impact will affect the obligee's ability to provide for his or her own needs and the obligor's ability to pay and whether such condition is expected to be temporary or permanent.
- The income of each party; however, the liabilities distributed to each party no longer has to be considered.
- When considering the earning capacity, educational level, vocational skills, and employability of each party, the court must also consider the ability of either party to obtain the necessary skills or education to become self-supporting or to contribute to his or self-support.
- The court must also give special consideration to the need to care for a minor child whom the parties have in common and who has a mental or physical disability.
- The tax treatment factor and the "all other sources of income" factor are repealed.
- A court using the "any other factor necessary to do equity" factor must specify the other factor and the findings of fact justifying the factor. This may include a finding or a supportive relationship or a reasonable retirement, as discussed below.

If a court orders the obligor to purchase or maintain a life insurance policy or bond to secure the alimony award, the bill requires the court to make specific findings of special circumstances that warrant such purchase or maintenance. The court may apportion the cost to either or both parties based on need and ability to pay.

The bill changes the length of time married as a classification of a marriages being either short-term, moderate-term, or long-term. A short-term marriage is changed to 0-10 years, a moderate-term marriage is changed to 10-20 years, and a long-term marriage is changed to 20 or more years duration.

The bill limits the length of an alimony award:
- Bridge-the-gap alimony is not changed by the bill, and remains limited to 2 years.
- Rehabilitative alimony is limited to 5 years.
- No durational alimony may be awarded if the marriage lasted fewer than 3 years.[35]

Durational alimony may end upon retirement of the obligor (see discussion below). With two exceptions, durational alimony of a marriage of over 3 years is limited in duration to:
- 50 percent of the length of the marriage if the marriage was short-term.
- 60 percent of the length of the marriage if the marriage was moderate-term.
- 75 percent of the length of the marriage if the marriage was long-term.

The bill authorizes the court to extend the length of durational alimony beyond the maximum length above upon the consideration of four exceptional circumstances:
- The extent to which the obligee's age and employability limit the obligee's ability for self-support.
- The extent to which the obligee's available financial resources limit the obligee's ability for self-support.

[35] The length of the marriage is calculated as follows: the time period starts on the date of the marriage, and ends on date of the filing of the petition for dissolution of the marriage.

- The extent to which the obligee is mentally or physically disabled or has been diagnosed with a mental or physical condition that has rendered, will render, him or her incapable of self-support.
- The extent to which the obligee is the caregiver to a mentally or physically disabled child, whether or not the child has attained the age of majority, who is common to the parties. This extension terminates when the child no longer needs caregiving by the obligee or upon the child's death.

The bill limits the amount of durational alimony to the lesser of the obligee's reasonable need or no more than 35 percent of the difference between the parties' net incomes.

Modification of an Existing Award of Alimony – Supportive Relationship

The bill requires (as opposed to simply "may" in current law) a court to reduce or terminate alimony upon specific written findings that the obligee is in a supportive relationship with another person.

The obligor must prove, by a preponderance of the evidence that a supportive relationship existed or has existed in the 365 days before the filing of the petition for dissolution of marriage, separate maintenance, or supplemental petition for modification. If it is proven that a supportive relationship exists or has existed, the burden shifts to the obligee to prove, by a preponderance of the evidence, that the court should not reduce or terminate an existing alimony award. The bill modifies the factors the court must consider in determining whether a supportive relationship exists as follows:

- Removes the requirement that the parties in the supportive relationship are residing together in a permanent place of abode.
- Adds that the court may consider whether the obligee and the other person have acquired or maintained a joint bank account or other financial accounts.
- Clarifies that the court must consider the extent to which the obligee and the other person have financially supported each other, including payment of the other's debts, expenses, or liabilities.
- Adds that a court must consider the extent to which the obligor has paid the existing alimony award or failed to do so and the existence and amount of any arrearage.
- Adds that a court may consider the extent to which the obligee or the other person has provided support to other family members.

Modification of an Existing Award of Alimony - Retirement

The bill codifies the common law right to seek modification of an existing alimony award based on reasonable retirement of the obligor.

The bill allows a court to reduce or terminate an existing award of alimony upon specific, written findings of fact that the obligor has reached normal retirement age as defined by the Social Security Administration, or the customary age for his or her profession, and the obligor has made demonstrative and measurable efforts to retire or has actually retired. The obligor must prove, by a preponderance of the evidence, that his or her retirement reduces his or her ability to pay alimony. If the court determines that the obligor's retirement does reduce his or her ability to pay

alimony, the burden shifts to the obligee to prove, by a preponderance of the evidence, that the alimony award should not be reduced or terminated.

The obligor may file a petition for modification of an existing award of alimony, no more than six months before an anticipated retirement, which shall be effective upon his or her reasonable and voluntary retirement as determined by the court. The court must make specific written findings supporting the decision to allow or disallow modification or termination based on retirement.

In determining whether to modify or terminate alimony based on the obligor's retirement, the court must consider the following factors:

- The age and health of the obligor.
- The nature and type of work performed by the obligor.
- The customary age of retirement in the obligor's profession.
- The obligor's motivation for retirement and the likelihood of returning to work.
- The needs of the obligee and the ability of the obligee to contribute toward his or her basic needs.
- The economic impact that a termination or reduction of alimony would have on the obligee.
- All the assets that the obligee and obligor accumulated or acquired prior to the marriage or following the entry of the final judgment as well as the obligor's and obligee's respective roles in the wasteful depletion of marital assets at the time of the entry of the final judgment.
- The income the obligee and the obligor earned during the marriage or following the entry of the final judgment.
- The Social Security benefits, retirement plan benefits, or pension benefits payable to the obligor and obligee following the entry of the final judgment.
- The obligor's compliance with the existing alimony obligation.

Timesharing with Minor Children

The bill repeals a requirement that a party must show that a change in circumstance was unanticipated to modify a parenting plan and time-sharing schedule.

The bill also provides that a parent's relocation to a residence within 50 miles of the other parent is a substantial and material change in circumstances.

Effective Date

The bill takes effect July 1, 2023. The provisions related to an award of alimony apply to all initial petitions for dissolution of marriage or support unconnected with dissolution of marriage pending or filed on or after July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. SB 1416 may reduce litigation costs by making alimony awards more predictable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.08, 61.13, 61.14, and 741.0306.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

919654

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Fiscal Policy (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete line 589

and insert:

or alimony must be modified or terminated if such a relationship

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete line 51

and insert:

relationships; revising construction and applicability;

388578

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Fiscal Policy (Berman) recommended the following:

Senate Amendment (with title amendment)

Between lines 653 and 654
insert:

Section 4. The amendments made by this act to s. 61.14(1)(c), Florida Statutes, do not apply to marital settlement agreements executed before July 1, 2023.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:

388578

Delete line 64

and insert:

findings; providing applicability; amending s. 741.0306, F.S.; revising the

By Senator Gruters

22-00190B-23 20231416__

A bill to be entitled

An act relating to dissolution of marriage; amending s. 61.08, F.S.; making technical changes; authorizing the court to consider the adultery of either spouse and any resulting economic impact in determining the amount of alimony awarded; requiring the court to make certain written findings in its awards of alimony; authorizing the court to award a combination of forms of alimony or forms of payment for certain purposes; providing a burden of proof for the party seeking support, maintenance, or alimony; requiring the court to make written findings under certain circumstances; revising factors that the court must consider in determining the form or forms of support, maintenance, or alimony; requiring the court to make specific findings regarding the purchase or maintenance of a life insurance policy or a bond to secure alimony; authorizing the court to apportion costs of such policies or bonds; modifying certain rebuttable presumptions related to the duration of a marriage for purposes of determining alimony; prohibiting the length of an award of rehabilitative alimony from exceeding a specified timeframe; revising a provision authorizing the modification of rehabilitative alimony upon completion of the rehabilitative plan; revising provisions related to durational alimony; prohibiting the length of an award of durational alimony from exceeding specified timeframes; authorizing the court to extend durational alimony under certain

22-00190B-23 20231416__

circumstances; specifying the calculation of durational alimony; removing a provision authorizing the court to award permanent alimony; providing applicability; amending s. 61.13, F.S.; removing the unanticipated change of circumstances requirement regarding modifying a parenting plan and time-sharing schedule; authorizing the court to consider a certain relocation of a parent as a substantial and material change for the purpose of a modification to the time-sharing schedule, subject to a certain determination; amending s. 61.14, F.S.; requiring the court to reduce or terminate support, maintenance, or alimony under certain circumstances; clarifying provisions relating to supportive relationships; specifying burdens of proof for the obligor and obligee when the court must determine that a supportive relationship exists or has existed and the extent to which an award of support, maintenance, or alimony should be reduced or terminated; requiring the court to make certain written findings; revising the additional factors the court must consider regarding supportive relationships; revising construction and application; authorizing the court to reduce or terminate an award of support, maintenance, or alimony upon specific written findings of fact regarding the obligor's retirement; providing burdens of proof for the obligor and obligee; requiring the court to make written findings regarding specified factors when deciding whether to reduce or terminate support, maintenance,

or alimony; authorizing the obligor to file a petition within a certain timeframe to modify or terminate his or her support, maintenance, or alimony obligation in anticipation of retirement; requiring the court to consider certain factors and make certain written findings; amending s. 741.0306, F.S.; revising the information contained in a certain family law handbook; conforming a provision to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—

(1)(a) In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form or forms of temporary, ~~which alimony may be~~ bridge-the-gap, rehabilitative, or durational alimony, as is equitable ~~or permanent in nature or any combination of these forms of alimony~~. In an ~~any~~ award of alimony, the court may order periodic or lump sum payments ~~or payments in lump sum or both~~. The court may consider the adultery of either spouse and any resulting economic impact in determining the amount of alimony, if any, to be awarded.

(b) The court shall make written findings of fact regarding the basis for awarding a form or any combination of forms of alimony, including the type of alimony and the length of time for which the alimony is awarded. The court may award a combination of forms of alimony or forms of payment, including

lump sum payments, to provide greater economic assistance in order to allow the obligee to achieve self-support ~~The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. In all dissolution actions, the court shall include findings of fact relative to the factors enumerated in subsection (2) supporting an award or denial of alimony~~.

(2)(a) In determining whether to award support, maintenance, or alimony ~~or maintenance~~, the court shall first make a specific, factual determination as to whether the ~~either~~ party seeking support, maintenance, or alimony has an actual need for it ~~alimony or maintenance~~ and whether the other ~~either~~ party has the ability to pay support, maintenance, or alimony ~~or maintenance~~. The party seeking support, maintenance, or alimony has the burden of proving his or her need for support, maintenance, or alimony and the other party's ability to pay support, maintenance, or alimony.

(b) When determining a support, maintenance, or alimony claim, the court shall include written findings of fact relative to the factors provided in subsection (3) supporting an award or denial of support, maintenance, or alimony, unless the denial is based upon a failure to establish a need for or ability to pay support, maintenance, or alimony. However, the court shall make written findings of fact as to the lack of need or lack of ability to pay in denying a request for support, maintenance, or alimony.

(3) If the court finds that the ~~a~~ party seeking support, maintenance, or alimony has a need for it ~~alimony or maintenance~~ and that the other party has the ability to pay support,

maintenance, or alimony ~~or maintenance~~, then in determining the proper form or forms ~~type and amount~~ of support, maintenance, or alimony ~~or maintenance~~ under subsections (5)-(8), or a deviation therefrom, the court shall consider all of the following relevant factors, including, but not limited to:

(b) ~~(a)~~ The standard of living established during the marriage and the anticipated needs and necessities of life for each party after the entry of the final judgment.

(a) ~~(b)~~ The duration of the marriage.

(c) The age, ~~and the~~ physical, mental, and emotional condition of each party, including whether either party is physically or mentally disabled and the resulting impact on either the obligee's ability to provide for his or her own needs or the obligor's ability to pay alimony and whether such conditions are expected to be temporary or permanent.

(d) The ~~financial~~ resources and income of each party, including the income generated from both nonmarital and ~~the~~ marital assets ~~and liabilities distributed to each~~.

(e) The earning capacities, educational levels, vocational skills, and employability of the parties, including the ability of either party to obtain the necessary skills or education to become self-supporting or to contribute to his or her self-support prior to the termination of the support, maintenance, or alimony award ~~and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment~~.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.

(g) The responsibilities each party will have with regard to any minor children whom the parties ~~they~~ have in common, with special consideration given to the need to care for a child with a mental or physical disability.

(h) ~~The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.~~

~~(i) All sources of income available to either party, including income available to either party through investments of any asset held by that party.~~

~~(j)~~ Any other factor necessary for ~~to do~~ equity and justice between the parties, which shall be specifically identified in the written findings of fact. This may include a finding of a supportive relationship as provided for in s. 61.14(1)(b) or a reasonable retirement as provided for in s. 61.14(1)(c)1.

(4) ~~(3)~~ To the extent necessary to protect an award of alimony, the court may order the obligor ~~any party who is ordered to pay alimony~~ to purchase or maintain a life insurance policy or a bond, or to otherwise secure such alimony award with any other assets that ~~which~~ may be suitable for that purpose. The court must make specific findings that there are special circumstances that warrant the purchase or maintenance of a life insurance policy or a bond to secure the alimony award. If the court orders a party to purchase or maintain a life insurance policy or a bond, the court may apportion the costs of such insurance or bond to either or both parties based upon a determination of the ability of the obligee and obligor to pay such costs.

(5) ~~(4)~~ For purposes of determining alimony, there is a

rebuttable presumption that a short-term marriage is a marriage having a duration of less than 10 ~~7~~ years, a moderate-term marriage is a marriage having a duration between 10 and 20 ~~of greater than 7 years but less than 17~~ years, and a long-term marriage is a marriage having a duration of 20 ~~17~~ years or longer ~~greater~~. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.

(6) ~~(5)~~ Bridge-the-gap alimony may be awarded to provide support to ~~assist~~ a party in making the ~~by providing support to allow the party to make a~~ transition from being married to being single. Bridge-the-gap alimony assists ~~is designed to assist~~ a party with legitimate identifiable short-term needs~~., and~~ The length of an award of bridge-the-gap alimony may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the obligee ~~party receiving alimony~~. An award of bridge-the-gap alimony is ~~shall~~ not ~~be~~ modifiable in amount or duration.

(7)(a) ~~(6)(a)~~ Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or

2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan ~~which shall be~~ included as a part of any order awarding rehabilitative alimony.

(c) The length of an award of rehabilitative alimony may

not exceed 5 years.

(d) An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan if the plan is completed before the length of the award of rehabilitative alimony expires.

(8)(a) ~~(7)~~ Durational alimony may be awarded ~~when permanent periodic alimony is inappropriate. The purpose of durational alimony is~~ to provide a party with economic assistance for a set period of time ~~following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis~~. An award of durational alimony terminates upon the death of either party or upon the remarriage of the obligee ~~party receiving alimony~~. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with s. 61.14. Durational alimony may not be awarded following a marriage lasting less than 3 years. ~~However,~~ The length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage except as set forth in this subsection.

(b) An award of durational alimony may not exceed 50 percent of the length of a short-term marriage, 60 percent of the length of a moderate-term marriage, or 75 percent of the length of a long-term marriage. Under exceptional circumstances, the court may extend the term of durational alimony by a showing of clear and convincing evidence that it is necessary after application of the factors in subsection (3) and upon

consideration of all of the following additional factors:

1. The extent to which the obligee's age and employability limit the obligee's ability for self-support, either in whole or in part.

2. The extent to which the obligee's available financial resources limit the obligee's ability for self-support, either in whole or in part.

3. The extent to which the obligee is mentally or physically disabled or has been diagnosed with a mental or physical condition that has rendered, or will render, him or her incapable of self-support, either in whole or in part.

4. The extent to which the obligee is the caregiver to a mentally or physically disabled child, whether or not the child has attained the age of majority, who is common to the parties. Any extension terminates upon the child no longer requiring caregiving by the obligee, or upon death of the child, unless one of the other factors in this paragraph apply.

(c) The amount of durational alimony is the amount determined to be the obligee's reasonable need, or an amount not to exceed 35 percent of the difference between the parties' net incomes, whichever amount is less. Net income shall be calculated in conformity with s. 61.30(2) and (3), excluding spousal support paid pursuant to a court order in the action between the parties.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be~~

~~awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.

(10)(a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or

enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments must ~~shall~~ be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(11) The court shall apply this section to all initial petitions for dissolution of marriage or support unconnected

with dissolution of marriage pending or filed on or after July 1, 2023.

Section 2. Paragraph (c) of subsection (2) and subsection (3) of section 61.13, Florida Statutes, are amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial and~~,~~ material~~, and unanticipated~~ change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. Except as otherwise provided in this paragraph, there is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The following evidence creates a rebuttable presumption of detriment to the child:

a. A parent has been convicted of a misdemeanor of the

first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775;

b. A parent meets the criteria of s. 39.806(1)(d); or

c. A parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

(I) The parent was 18 years of age or older.

(II) The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

3. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities

between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

4. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

5. There is a rebuttable presumption against granting time-sharing with a minor child if a parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

a. The parent was 18 years of age or older.

b. The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

A parent may rebut the presumption upon a specific finding in writing by the court that the parent poses no significant risk of harm to the child and that time-sharing is in the best interests of the minor child. If the presumption is rebutted, the court shall consider all time-sharing factors in subsection (3) when developing a time-sharing schedule.

6. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner

of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interests ~~interest~~ of the child must ~~shall~~ be the primary consideration. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial and~~,~~ material~~, and unanticipated~~ change in circumstances and a determination that the modification is in the best interests of the child. If the parents of a child are residing greater than 50 miles apart at the time of the entry of the last order establishing time sharing and a parent moves within 50 miles of the other parent, then that move may be considered a substantial and material change in circumstances for the purpose of a modification to the time-sharing schedule, so long as there is a determination that the modification is in the best interests of the child. Determination of the best interests of the child must ~~shall~~ be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to:

(a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

(b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

(c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

(k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.

(l) The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

(o) The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect

the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Section 3. Present paragraphs (c) and (d) of subsection (1) of section 61.14, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, a new paragraph (c) is added to that subsection, and paragraph (b) of that subsection is amended, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court must ~~may~~ reduce or terminate an award of support, maintenance, or alimony upon specific written findings by the court that ~~since the granting of a divorce and the award of alimony~~ a supportive relationship has existed between the obligee and a person who is not related to the obligee by consanguinity or affinity ~~with whom the obligee resides~~. ~~On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists.~~

2. In determining the nature of the relationship between an obligee and another person and the extent to which an ~~whether an existing~~ award of support, maintenance, or alimony should be reduced or terminated because of the existence of a ~~an alleged~~ supportive relationship between an obligee and a person who is not related by consanguinity or affinity, the court shall make written findings of fact ~~and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question~~. The burden is on the obligor to prove, by a preponderance of the evidence, that a supportive relationship exists or has existed in the 365 days before the filing of the petition for dissolution of marriage, separate maintenance, or supplemental petition for modification. If a supportive relationship is proven to exist or to have existed, the burden shifts to the obligee to prove, by a preponderance of the evidence, that the court should not deny or reduce an initial award of support, maintenance, or alimony or reduce or terminate an existing award of support, maintenance, or alimony. The court shall consider and make written findings of fact regarding all relevant facts in s. 61.08(3) and ~~give consideration, without limitation, to circumstances, including, but not limited to,~~ the following additional factors~~, in determining the relationship of an obligee to another person~~:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person ~~in a permanent place of abode~~.

c. The extent to which the obligee and the other person have pooled their assets or income, acquired or maintained a joint bank account or other financial accounts, or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has financially supported the other, in whole or in part, including payment of the other's debts, expenses, or liabilities.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's business entity ~~company~~ or employer.

g. The extent to which ~~Whether~~ the obligee and the other person have worked together to acquire any assets ~~create~~ or to enhance the ~~anything of~~ value of any assets.

h. The extent to which ~~Whether~~ the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. The extent to which ~~Evidence in support of a claim that~~ the obligee and the other person have an express or implied agreement regarding property sharing or financial support.

j. The extent to which the obligor has paid the existing alimony award or failed to do so and the existence and amount of any arrearage ~~Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support~~.

k. The extent to which ~~Whether~~ the obligee and the other

person have provided support to the children or other family members of one another, regardless of any legal duty to do so.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes ~~only~~ that relationships ~~do~~ exist that provide financial or economic support equivalent to a marriage and that support, maintenance, or alimony may be modified or terminated if such a relationship is proven to exist ~~terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph~~. The existence of a conjugal relationship~~, though it may be relevant to the nature and extent of the relationship,~~ is not necessary for the application of ~~the provisions of~~ this paragraph.

(c)1. The court may reduce or terminate an award of support, maintenance, or alimony upon specific, written findings of fact that the obligor has reached normal retirement age as defined by the Social Security Administration or the customary retirement age for his or her profession and that the obligor has taken demonstrative and measurable efforts or actions to retire or has actually retired. The burden is on the obligor to prove, by a preponderance of the evidence, that his or her retirement reduces his or her ability to pay support, maintenance, or alimony. If the court determines that the obligor's retirement has reduced or will reduce the obligor's ability to pay, the burden shifts to the obligee to prove, by a preponderance of the evidence, that the obligor's support, maintenance, or alimony obligation should not be terminated or

reduced.

2. In determining whether an award of support, maintenance, or alimony should be reduced or terminated because of the obligor's voluntary retirement, the court shall give consideration to, and make written findings of fact regarding the following factors:

a. The age and health of the obligor.

b. The nature and type of work performed by the obligor.

c. The customary age of retirement in the obligor's profession.

d. The obligor's motivation for retirement and likelihood of returning to work.

e. The needs of the obligee and the ability of the obligee to contribute toward his or her own basic needs.

f. The economic impact that a termination or reduction of alimony would have on the obligee.

g. All assets of the obligee and the obligor accumulated or acquired prior to the marriage, during the marriage, or following the entry of the final judgment as well as the obligor and obligee's respective roles in the wasteful depletion of any marital assets received by him or her at the time of the entry of the final judgment.

h. The income of the obligee and the obligor earned during the marriage or following the entry of the final judgment.

i. The social security benefits, retirement plan benefits, or pension benefits payable to the obligor and the obligee following the final judgment of dissolution.

j. The obligor's compliance, in whole or in part, with the existing alimony obligation.

3. In reasonable anticipation of retirement, but not more than 6 months before retirement, the obligor may file a petition for modification of his or her support, maintenance, or alimony obligation, which shall be effective upon his or her reasonable and voluntary retirement as determined by the court pursuant to the factors in subparagraph 2. The court shall give consideration to, and make written findings of fact regarding, the factors in subparagraph 2. and s. 61.08(3) when granting or denying the obligor's petition for modification; when confirming, reducing, or terminating the obligor's alimony obligation; and when granting or denying any request for modification, the date of filing of the obligor's modification petition, or other date post-filing as equity requires, giving due regard and consideration to the changed circumstances or the financial ability of the parties.

Section 4. Paragraph (f) of subsection (3) of section 741.0306, Florida Statutes, is amended to read:

741.0306 Creation of a family law handbook.—

(3) The information contained in the handbook or other electronic media presentation may be reviewed and updated annually, and may include, but need not be limited to:

(f) Alimony, including temporary, durational, ~~permanent~~ rehabilitative, and lump sum.

Section 5. This act shall take effect July 1, 2023.